

Quickscribe Reporter

Vol: XVI – Issue: III – March 2017

QUICKSCRIBE NEWS:

Short Spring Session Summary

The 6th Session, 40th Parliament wrapped up on March 16th in time for the upcoming Provincial elections. Only ten Government Bills were introduced, and a staggering 40 Members' Bills introduced – none of which progressed past 1st reading. For a summary of all the Bills, and what Acts were affected, have a look at our [Bills page](#).

Early Consolidated Small Claims Rules and CRTA

For your convenience, Quickscribe has updated and published an early consolidated version of the [Civil Resolution Tribunal Act](#), incorporating changes made by Bill 19, [Civil Resolution Tribunal Amendment Act, 2015](#), which will come into force by [B.C. Reg. 111/2017](#) on June 1, 2017. Also published is an early consolidation of amendments made to the [Small Claims Rules](#), B.C. Reg. 261/93, by [B.C. Reg. 120/2017](#), effective June 1, 2017. New red text versions of these early consolidations are now available via the Title Search on Quickscribe. Quickscribe routinely publishes early consolidations of legislation on request.

Latest Annotations

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

- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)
- [OnPoint Legal Research Corporation](#) – [Court Jurisdiction and Proceedings Transfer Act](#), [Crime Victim Assistance Act](#), [Strata Property Act](#), [Supreme Court Civil Rules](#), B.C. Reg. 168/2009, [Insurance \(Vehicle\) Regulation](#), B.C. Reg. 447/83
- [Margaret Mason](#), Bull Housser & Tupper LLP – [Societies Act](#)
- [Eileen Vanderburgh](#), Alexander Holburn + Lang LLP – [Privacy Act](#), [Freedom of Information and Protection of Privacy 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 |

COMPANY & FINANCE

Company and Finance News:

British Columbia Securities Commission Finds Common Law Due Diligence Defense Available in Administrative Proceedings for Breach of Securities Legislation

In a decision released on February 20, 2017, a panel of the British Columbia Securities Commission (the "Commission") held that a defence of due diligence is available in the context of contraventions of securities legislation that proceed under an administrative process.

In [Re SunCentro](#), the respondent SunCentro Corporation ("SunCentro") entered into a business development agreement with the respondents YDS Energy, Resources and Humanitarian Relief Corporation ("YDS"), to provide marketing and financing services to SunCentro. SunCentro also entered into an agreement with Donald Weiss ("Weiss"), authorizing Weiss to raise money for SunCentro. As part of these agreements, SunCentro agreed to pay the YDS and Weiss commissions for referring investors to SunCentro.

SunCentro never filed a prospectus under the British Columbia [Securities Act](#) (the "Act") and instead relied on prospectus exemptions to raise money from investors. However, none of the investors referred to SunCentro qualified under a registration or prospectus exemption. Accordingly, the executive director of the Commission alleged that each of the respondents contravened [section 61](#) of the Act, which prohibits the distribution of securities without a prospectus in the absence of an exemption. The executive director also alleged that the directors and officers of SunCentro and YDS authorized, permitted or acquiesced to those contraventions, and were therefore liable under [section 168.2](#) of the Act. Read the [full article](#) by Alannah Fotheringham of Borden Ladner Gervais LLP.

Federal Budget 2017 Financial Services Highlights

The Government tabled [Budget 2017](#) on March 22. The financial services proposals are aimed at the following:

- Greater resiliency for the Canadian financial sector;
- A modernized deposit insurance framework that continues to protect the deposits of Canadians and promote financial stability; and
- Strengthened ability for Canada to combat money laundering and terrorist financing.

Financial Sector Stability Measures

Bank Resolution Regime

Legislative amendments are proposed to do the following:

- Formally designate Canada Deposit Insurance Corporation (CDIC) as the resolution authority for its members and require Canada's biggest banks to develop and submit resolution plans;
- Clarify the treatment of, and protections for, eligible financial contracts – such as derivatives – in a bank resolution process.
- Reinforce the Superintendent of Financial Institutions' powers to set and administer the requirement for systemically important banks to maintain a minimum capacity to absorb losses in a resolution.

Read the [full article](#) by [Sharissa Ellyn](#) of Norton Rose Fulbright.

BC Court Enforces Franchise Termination and Release Agreement

In the recent decision [Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.](#), 2017 BCSC 358, the Supreme Court of British Columbia upheld a Mutual Cancellation and Release agreement in the context of a franchisor-franchisee relationship. The decision confirms that, absent evidence of duress or unconscionability, a franchisor is permitted to take advantage of a superior bargaining position, and obtain an enforceable release when a franchisee is in default. The decision only considered common law principles as opposed to franchise legislation. The Court also awarded damages for the tort of passing off against a franchisee who refused to cease operations after termination.

Background

The Franchisor entered into a standard franchising agreement with the defendant franchisees.

Following several months of unpaid franchise fees, a long history of failed cleanliness inspections, and other breaches of the franchisor's standards and specifications, the franchisor decided to terminate the franchising relationship.

Instead of terminating immediately, however, the franchisor offered the franchisee the opportunity to enter into a Mutual Cancellation and Release agreement. Under the agreement, the franchisee was provided with several months in which to sell its franchise to a new buyer. In exchange the franchisee agreed to continue adhering to the system standards, and released all claims past and future against the franchisor.

Read the [full article](#) by [Adam Ship](#), [Helen Fotinos](#) and Fraser Dickson of McCarthy Tétrault LLP.

FICOM News

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

- [Pension Stakeholder Forum](#) – Event Material
- [News Release](#) – Ontario Credit Union Ordered to Bring Pre-Paid Card Business Into Compliance With B.C. Law
- [Decisions and Orders](#) – *Financial Institutions Act* – All Trans Financial Services Credit Union Limited
- [Financial Institutions Bulletin](#) – Information Required Of Directors, Senior Officers, Subscribers, and Shareholders
- [Guidelines Credit Unions](#) – 2017 Updates to the Capital Adequacy Return Completion Guide Issued for Consultation
- [Call for Public Comment](#) – B.C. Credit Union Seeks to exit Provincial Regulation
- [Commission Consultation](#) – Notice of Application – Credit Union application for consent to continue from British Columbia

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 March:

- [41-101](#) – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery - Adoption of Amendments to National Instrument 41-101 *General Prospectus Requirements* and to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* and Related Consequential Amendments
- [81-102](#) – Mutual Fund Risk Classification Methodology for Use in Fund Facts and ETF Facts - Adoption of Amendments to National Instrument 81-102 *Investment Funds* and Related Consequential Amendments
- [51-348](#) – CSA Staff Notice 51-348 *Staff's Review of Social Media Used by Reporting Issuers*
- [31-348](#) – CSA Staff Notice 31-348 *OBSI Joint Regulators Committee Annual Report for 2016*

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|-----------------------|---------------------------------|
| British Columbia Turkey Marketing Scheme (80/2017) | Mar. 3/17 | by Reg 80/2017 |
| Designated Accommodation Area Tax Regulation (93/2013) | Mar. 1/17 | by Reg 275/2016 |
| | Apr. 1/17 | by Reg 41/2017 |
| Designated Institutions Regulation (158/2003) | Mar. 9/17 | by Reg 102/2017 |
| Disclosure of the Cost of Consumer Credit | Mar. 1/17 | by Reg 54/2017 |

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| Regulation (273/2004) | | |
| Fee Setting Criteria Regulation (292/2004) | Apr. 1/17 | by Reg 104/2017 |
| Income Tax Act | RETROACTIVE to Dec. 20/02 | by 2017 Bill 9, c. 5, section 2 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| | RETROACTIVE to Nov. 15/03 | by 2017 Bill 9, c. 5, section 5 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| | RETROACTIVE to Jan. 1/10 | by 2017 Bill 9, c. 5, section 3 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| | RETROACTIVE to Jan. 1/15 | by 2017 Bill 9, c. 5, section 1 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| | Mar. 16/17 | by 2017 Bill 9, c. 5, section 4 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| Insurance (Captive Company) Act Regulation (99/2017) | REVISED Mar. 8/17 | see Reg 99/2017 |
| Insurance (Captive Company) Act Regulation (157/87) | REPEALED Mar. 8/17 | by Reg 99/2017 |
| Insurance Premium Tax Act | RETROACTIVE to Jan. 1/09 | by 2017 Bill 9, c. 5, sections 6 to 19 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| Interest Rate Regulation (75/2017) | NEW Apr. 1/17 | see Reg 75/2017 |
| Logging Tax Act | RETROACTIVE to Jan. 1/09 | by 2017 Bill 9, c. 5, sections 20 to 36 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| Long Term Disability Fund Interest Regulation (51/2017) | NEW Apr. 1/17 | see Reg 51/2017 |
| Motor Vehicle Returned to Manufacturer Tax Remission Regulation (90/2017) | NEW Mar. 7/17 | by Reg 90/2017 |
| National Instrument 41- | | |

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| 101 <i>General Prospectus Requirements</i> (59/2008) | Mar. 8/17 | by Reg 85/2017 |
| National Instrument 81-101 <i>Investment Fund Continuous Disclosure</i> (218/2005) | Mar. 8/17 | by Reg 85/2017 |
| National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (1/2000) | Mar. 8/17 | by Reg 85/2017 |
| National Instrument 81-102 <i>Investment Funds</i> (2/2000) | Mar. 8/17 | by Reg 85/2017 |
| Special Accounts Appropriation and Control Act | Mar. 30/17 | by 2014 Bill 13, c. 5, sections 55 to 57 (in force by Reg 124/2017), Off-Road Vehicle Act |
| Tobacco Tax Act | Mar. 16/17 | by 2017 Bill 9, c. 5, sections 20 to 36 only (in force by Royal Assent), Finance Statutes Amendment Act, 2017 |
| Tobacco Tax Act Regulation | Mar. 7/17 | by Reg 91/2017 |

ENERGY & MINES

Energy and Mines News:

Advocates Back in Court Pursuing Charges Mount Polley Dam Collapse

MiningWatch Canada launched the case last fall, saying the province and the Mount Polley Mining Corp. violated the [Fisheries Act](#) when a tailings pond collapsed at the copper and gold mine in August 2014. The group alleges serious harm was done to fish and the environment when the dam's failure sent 25 million cubic metres of wastewater gushing into streams and waterways in BC's Interior. The allegations have not been proven in court and in January, Crown lawyer Alexander Clarkson argued there is no prospect of conviction in the case. Clarkson said the private prosecution is not in the public interest because the BC Conservation Officer Service, Environment Canada and Fisheries and Oceans Canada are already investigating, and their findings could be considered for the charge approval process. Read *The Province* [article](#).

Vancouver Island First Nation Gives Nod to Proposed LNG Export Facility

Members of the small First Nation voted Saturday [March 25th] to approve development of the LNG facility at Sarita Bay, on the west coast of Vancouver Island.

"I feel it is going to be a very inviting opportunity for international investors to come to Canada and say, 'Hey, there is certainty there and we would be willing to work there,'" Dennis said.

Steelhead CEO Nigel Kuzemko said the company has National Energy Board licences to export 24 million tonnes of LNG through the Sarita Bay facility every year, but he said discussions are ongoing about how they'll get the natural gas from northeastern BC and Alberta to Vancouver Island.

Kuzemko said existing pipelines are favoured, and Steelhead has been in talks over the possibility of bringing gas across the Salish Sea from Washington state or piping it across southern BC. Read *The Vancouver Sun* [article](#).

Possible New Clean Fuel Standard in Canada

Environment and Climate Change Canada (ECCC) is considering the development of a new clean fuels regulation under the [Canadian Environmental Protection Act, 1999](#). The purpose of this proposed new regulation is to reduce Canada's greenhouse gas (GHG) emissions through the adoption of lower carbon fuels and related technologies.

ECCC is intending to consult with provinces, territories, Indigenous Peoples and other stakeholders. Written comments are due by April 25, 2017, at the address provided below. ECCC has [issued a discussion](#) paper which includes the following issues for consideration:

- The regulation is intended to cover a wide range of fuels including liquid, gaseous and solid fuels to be used in transportation, industry, homes and buildings.
- The overall objective of the proposed regulation is to achieve a 30 megatonne annual reduction in Canada's aggregate GHG emissions by 2030 which, if achieved, will meaningfully contribute to Canada's overall GHG emissions reduction goal of 30 percent below 2005 emission levels by 2030.
- The regulation is intended to be non-prescriptive and designed to provide maximum flexibility to fuel suppliers – including a market-based crediting and trading system.

Read the [full article](#) by Mike Barrett, Sarah E. Gilbert, Thomas W. McInerney and Duncan M. McPherson of Bennett Jones LLP.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|-------------------------------|--|
| Demand-Side Measures Regulation | Mar. 24/17 | by Reg 117/2017 |
| Direction No. 5 to the British Columbia Utilities Commission (245/2013) | Mar. 22/17 | by Reg 115/2017 |
| Direction to the British Columbia Utilities Commission Respecting Undertaking Costs (77/2017) | NEW Mar. 2/17 | see Reg 77/2017 |
| Fee, Levy and Security Regulation (8/2014) | Mar. 15/17 | by Reg 106/2017 |
| First Nations Clean Energy Business Fund Regulation (377/2010) | Apr. 1/17 | by Reg 7/2017 |
| Geothermal Drilling and Production Regulation (170/83) | REPEALED Mar. 31/17 | by Reg 79/2017 |
| Geothermal Geophysical Exploration Regulation (358/98) | Mar. 31/17 | by Reg 39/2017 |
| Geothermal Operations Regulation (79/2017) | NEW Mar. 31/17 | see Reg 79/2017 |
| Geothermal Resources | | by 2008 Bill 20, c. 36, sections 131 (d) to (k), 132 to 141, 142 |

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| Act | Mar. 31/17 | (part), 143 (a), (c) to (e) (in force by Reg 39/2017), Oil and Gas Activities Act |
| Geothermal Resources Administrative Regulation (132/83) | REPEALED Mar. 31/17 | by Reg 39/2017 |
| Geothermal Resources General Regulation (39/2017) | NEW Mar. 31/17 | see Reg 39/2017 |
| Greenhouse Gas Reduction (Clean Energy) Regulation (102/2012) | Mar. 2/17 | by Reg 76/2017 |
| | Mar. 22/17 | by Reg 114/2017 |

FAMILY & CHILDREN

Family and Children News:

Aboriginal Child Protection and Dual Citizenship: Membership has its Benefits

In British Columbia, the Director representing the Ministry of Children and Family Development must notify the Aboriginal community (i.e. Indian Band) when there are child protection concerns such as removal of a child from their parents.

Under the [Child, Family and Community Service Act](#) (CFCSA), an Aboriginal Community (i.e. "treaty first nation, an Indian band or aboriginal community") is one that is designated by the Minister. This seems to run contrary to the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* under the self-determination aspects of that international instrument where Indigenous peoples have the right to "freely determine their political status and freely pursue their economic, social and cultural development" (*UNDRIP*, Article 3). Read the [full article](#) by [Troy Hunter](#) and published in *Law Now*.

BC Woman Loses Bid for Child Support from Ex-husband Who Was Not Father of Her Son

A woman who concealed from her husband the fact that he was not the father of her son has lost her bid for child support from him.

The couple had been married for three years when the son, only identified by the initial D in a court ruling, was born in March 2009. The husband, identified by the initials P.Z., took it for granted that he was the child's natural father, but it turned out that the birth was apparently the result of a "dalliance" between his wife, identified as E.Z., and another man.

In the ruling, B.C. Supreme Court Justice Robin Baird said that it was not clear how or when the question of the child's true parentage came up or what led the parties to agree to paternity testing.

But the paternity issue was laid conclusively to rest in June 2013, a year following the couple's separation, when DNA lab results confirmed that the respondent in the case, the husband was not the dad.

"Not surprisingly, the respondent was crestfallen and felt upset and betrayed," said the judge. "By this time, D was four years old."

The couple were living in Ontario prior to the divorce but after the September 2014 divorce, the wife moved to B.C., apparently to start a new life with a local man she had met on the Internet. Read [The Vancouver Sun article](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
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| Adoption Act | Mar. 16/17 | by 2017 Bill 2, c. 4, sections 1 to 7 only (in force by Royal Assent), Adoption Amendment Act, 2017 |
| Youth Custody Regulation (137/2005) | Apr. 1/17 | by Reg 11/2017 |

FOREST & ENVIRONMENT

Forest and Environment News:

Retroactive Taxpayer Liability under *Logging Tax Act*

The [Logging Tax Act](#) was amended by the [Finance Statutes Amendment Act, 2017](#), which received Royal Assent on March 16. The *Logging Tax Act* now provides that if an excess amount is refunded to the taxpayer, that amount is payable on the date of the refund. Moreover, the taxpayer is liable to pay interest on the amount beginning on that date. Two definitions and additional clarifications were made relating to taxes due the government. These changes were made retroactive to January 1, 2009.

BC Envoy says Softwood Lumber Negotiations "In the Hands of the U.S."

British Columbia's softwood trade envoy says there's a slight opportunity to quickly negotiate a new lumber agreement between Canada and the United States, but if a deal can't be reached by the summer or fall it could mean a lengthy fight.

David Emerson said Wednesday [March 29th] he sensed a chance at a deal but also saw continued turbulence in the administration of President Donald Trump and strong protectionist sentiments in the U.S. Congress after visiting Washington, D.C.

"My own guess is there is a window of opportunity, late summer or early fall, and if that doesn't initiate something meaningful in terms of negotiations then I think we're probably into next year," he said. "We're really now in the hands of the U.S. government to see this thing actually get started and discussions get underway," he added.

Emerson said there has not been a formal start to talks, but Canadian officials in Washington and Ottawa are preparing for negotiations. He said he met with David MacNaughton, Canada's ambassador to the U.S., last week as well as officials at Canada's embassy and Global Affairs Canada. Read the [CBC article](#).

BC Updates, Releases 2017-2019 Fishing Regulations

The Province has released the new, updated guide to freshwater fishing rules and regulations, Minister of Forests, Lands and Natural Resource Operations Steve Thomson announced today.

Government has posted the 2017-2019 Freshwater Fishing Regulations Synopsis on its fishing regulation website (<http://www.env.gov.bc.ca/fw/fish/regulations/>) and printed copies will soon be available at Front Counter B.C., Service B.C. and stores that sell fishing licences.

This synopsis is a comprehensive guide to the regulations, policies, and practices that guide freshwater fishing in B.C. The Province updates the synopsis every two years, and regularly posts updates online.

The synopsis also includes important angling-related articles including information on stopping the spread of invasive aquatic species, catch-and-release best practices, and tips on how to help keep aquatic ecosystems natural, intact and healthy. Read the government [news release](#).

Environmental Appeal Board Decisions

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

[Environmental Management Act](#)

- [Ellis O'Toole; Angie Delainey; Becky Bravi; Tricia McLellan v. Director, Environmental Management Act](#) [Preliminary Issues of Jurisdiction – Granted]
- [John Pickford; Beverly Haskins; Peter Luscombe; John Henry Dressler; Rodger Hamilton; Ellis O'Toole; Angie Delainey; Becky Bravi; Tricia McLellan v. Director, Environmental Management Act](#) [Preliminary Issues: Applications to Dismiss for Lack of Standing – Denied; 4 Applications to Strike Grounds for Appeal – Denied; 5 Applications to Strike Grounds for Appeal – Granted in Part]

[Water Act](#)

- [Thomas Hobby and SC Ventures Inc. v. Assistant Regional Water Manager](#) (0716880 B.C. Ltd.; 071886 B.C. Ltd.; 0716892 B.C. Ltd.; 0716927 B.C. Ltd.; 0716930 B.C. Ltd.; 0716945 B.C. Ltd.; 0716961 B.C. Ltd.; 0716967 B.C. Ltd.; 1028706 B.C. Ltd.; Malahat First Nation, Participants) [Application for Costs – Granted]

[Wildlife Act](#)

- [Barry D. Brandow vs. Regional Manager](#) [Consent Order – Appeal Dismissed]

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|------------------------------|---|
| Angling and Scientific Collection Regulation (125/90) | Mar. 1/17 | by Reg 74/2017 |
| Base Mapping and Geomatic Services Product and Services Price List Regulation (373/2005) | Mar. 1/17 | by Reg 48/2017 |
| Cattle Industry Development Council Regulation (240/94) | Apr. 1/17 | by Reg 112/2017 |
| Coastal Forest Industry Dispute Settlement Act | REPEALED Mar. 1/17 | by Reg 55/2017 |
| Controlled Alien Species Regulation (94/2009) | Mar. 2/17 | by Reg 78/2017 |
| Designation and Exemption Regulation (168/90) | Mar. 31/17 | by Reg 127/2017 |
| Hunting Licensing Regulation (8/99) | Mar. 31/17 | by Reg 127/2017 |
| Limited Entry Hunting Regulation (134/93) | Mar. 1/17 | by Reg 49/2017 |
| | Mar. 31/17 | by Reg 127/2017 |
| Forest Act | Mar. 7/17 | by 2016 Bill 12, c. 11, sections 1 to 7, 9 to 12, 14 to 16, 18, 21 to 23 and 24 (part) only (in force by Reg 92/2017), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2016 |
| Freshwater Fish Regulation (261/83) | Mar. 1/17 | by Reg 74/2017 |

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| Great Bear Rainforest (Forest Management) Act | Mar. 7/17 | by 2016 Bill 12, c. 11, sections 25 and 26 only (in force by Reg 92/2017), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2016 |
| Hunting Regulation (190/84) | Mar. 1/17 | by Reg 74/2017 |
| Hunting Licensing Regulation (8/99) | Mar. 1/17 | by Reg 74/2017 |
| Limited Entry Hunting Regulation (134/93) | Mar. 1/17 | by Reg 49/2017 |
| North American Gypsy Moth Eradication Regulation, 2010 (34/2010) | REPEALED Mar. 1/17 | by Reg 67/2017 |
| North American Gypsy Moth Eradication Regulation, 2015 (55/2015) | REPEALED Mar. 1/17 | by Reg 67/2017 |
| Park, Conservancy and Recreation Area Regulation (180/90) | Mar. 1/17 | by Reg 66/2017 |
| Permit Regulation (253/2000) | Mar. 31/17 | by Reg 127/2017 |
| Protected Areas of British Columbia Act | Mar. 7/17 | by 2016 Bill 25, c. 21, section 10 only (in force by Reg 88/2017), Miscellaneous Statutes (General) Amendment Act, 2016 |
| Water Sustainability Regulation (36/2016) | Mar. 31/17 | by Reg 130/2017 |
| Wildfire Act | Mar. 16/17 | by 2017 Bill 5, c. 2, section 1 only (in force by Royal Assent), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2017 |
| Wildlife Act | Mar. 31/17 | by 2016 Bill 12, c. 11, sections 32 to 34, 36 to 38, 42, 45 and 49 (part) (in force by Reg 127/2017), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2016 , and 2017 Bill 5, c. 2, sections 2 to 8 (in force by Reg 127/2017), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2017 |
| Wildlife Act Commercial Activities Regulation (338/82) | Mar. 1/17 | by Reg 74/2017 |
| | Mar. 15/17 | by Reg 107/2017 |
| | Mar. 31/17 | by Reg 127/2017 |

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| Wildlife Act General Regulation (340/82) | Mar. 1/17 | by Reg 74/2017 |
| | Mar. 31/17 | by Reg 127/2017 |
| Wood Residue Burner and Incinerator Regulation | Mar. 21/17 | by Reg 109/2017 |

HEALTH

Health News:

Ian Mulgrew: Medicare Trial Turns BC Courtroom into a Playing Field

The long-running BC constitutional trial over the provincial provision of Medicare has focused a klieg light on the worst of the legal profession's foibles – its love of sport.

Lawyers are competitive by nature, and their sporting theory of justice is never more on display than when they enter a courtroom. The spring in their step, the glint in their eye – ah, the very joy they feel preparing for the courtroom is bonded to the prospect of playing a game with a set of complicated rules and procedures that frustrate the average person.

They relish the procedural guidelines and the arcane language of legal protocol with the baseball fan's smug satisfaction of understanding what's going on even when the players are just standing around. The rules are always in foreground – available to be invoked and manipulated, to delay and to score points, to earn more money and to win.

After a leisurely spring break, the Medicare trial will resume with Victoria seeking another adjournment so the plaintiffs can "organize their case appropriately over the next 60 days to allow for a more efficient court process."

That would forestall witnesses such as retiring Health Minister Terry Lake from taking the stand or experts providing embarrassing testimony during an election. Read *The Vancouver Sun* [article](#).

Fentanyl Traffickers Should Face Stiffer Penalties in BC, Court Rules

The province's highest court has ruled that the sentencing range should be closer to between 18 and 36 months
The BC Court of Appeal has ruled that given the devastating impact of the fentanyl crisis, those convicted of trafficking the drug should face tougher sentences.

The current sentencing range is between six and 12 months in prison. A panel of BC Court of Appeal judges said a sentence of between 18 and 36 months is more suitable.

[In a written decision issued earlier this week](#), the justices highlighted the enormity of the crisis.

"Fentanyl is a scourge. It poses intolerable risks of accidental overdosing because it is so much more powerful than morphine," said Justice David Harris. Read the *CBC* [article](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|----------------|---------------------------------|
| Drug Price Regulation (344/2012) | Apr. 1/17 | by Reg 266/2016 |
| E-Health Regulation (129/2011) | Mar. 7/17 | by Reg 94/2017 |
| Emergency Medical Assistants Regulation | Mar. 29/17 | by Reg 123/2017 |

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| (210/2010) | | |
| Medical and Health Care Services Regulation (426/97) | Mar. 1/17 | by Reg 60/2017 |

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Supreme Court Clarifies Law Regarding Employment Probation

The British Columbia Supreme Court recently addressed key issues regarding probationary periods in employment contracts.

Background

In [Ly v. British Columbia \(Interior Health Authority\)](#), 2017 BCSC 42, the contract of employment executed by the plaintiff, Mr. Ly, contained the following probation clause: "Employees are required to serve an initial probationary period of six (6) months for new positions" (the "Probation Clause").

Mr. Ly was dismissed from his position after two months and challenged the enforceability of the Probation Clause. He argued that such a brief reference to probation was not sufficient to rebut the common law presumption of reasonable notice owed to dismissed employees. The Court rejected this argument, concluding that the meaning of the term "probation" is well understood and noting that Mr. Ly had not questioned or attempted to negotiate the Probation Clause (as he had done, for example, with respect to a different clause in the agreement).

Mr. Ly further argued that the six-month Probation Clause was unenforceable because its six-month duration fell afoul of [section 63\(1\)](#) of the [Employment Standards Act](#) (the "ESA"), which requires employers to provide employees who have served at least three months of employment with a minimum of one week's notice or pay in lieu.

Decision

The Court acknowledged that the law regarding whether employers can require probationary periods longer than three months was somewhat unclear.

Read the [full article](#) by [Laura DeVries](#) of McCarthy Tétrault.

New WorkSafeBC Regulations for Joint Occupational Health and Safety Committees Effective April 3, 2017

In British Columbia, a workplace with 20 or more workers must have a joint occupational health and safety committee ("Committee"), and a workplace with 10-19 workers must have a worker health and safety representative. Effective April 3, 2017, amendments to the [Occupational Health and Safety Regulation](#) will require the following:

1. Employers must ensure that a written evaluation is conducted annually to measure the effectiveness of the Committee. Section 3.26(b) of the Regulation sets out who can conduct the evaluation, and [section 3.26\(3\)](#) of the Regulation sets out what information must be covered by the evaluation. WorkSafeBC reports that it will launch an online evaluation tool that employers and Committees may use to comply with this requirement.

Read the [full article](#) by [Monique Ronning](#) of McCarthy Tétrault.

BC Supreme Court Finds Human Rights Tribunal's Decision that Failed to Establish Nexus between Employee's Termination and Alleged Sexual Discrimination Was Not Patently Unreasonable [Sones v. Squamish \(District\)](#)

BC Supreme Court dismissed petition for judicial review in respect of Human Rights Tribunal's decision to summarily dismiss a complaint of sexual discrimination on the basis that the alleged contraventions occurred more than six months before the complaint was filed.

[2017] B.C.J. No. 191

2017 BCSC 169 British Columbia Supreme Court
February 2, 2017
J.C. Grauer J.

In January 2014, Sones, a fire department clerk, reported allegations of sexual discrimination and harassment to her employer, the District of Squamish. To ensure a comfortable and impartial investigation, the District placed her on a paid leave of absence pending the investigation. The investigator's report was completed in June 2014, concluding there was no evidence of any intimidating, hostile or offensive working environment, and that most of Sones' complaints were unsubstantiated, with the exception of some complaints of inappropriate behavioural incidents. The District discussed those incidents with the employees involved, then asked Sones to return to work. Sones refused, saying it would be impossible for her to safely return to work until it was clear she could return to a harassment-free workplace.

Read the [full article](#) by [Kara Hill](#) of Harper Grey LLP.

Government to Direct the Creation of a Policy for Return of WorkSafeBC Funds

The government intends to amend the [Workers Compensation Act](#) to establish a new policy requiring WorkSafeBC to return funds to employers when it has a surplus of contributions from employers in the Accident Fund.

The *Workers Compensation Act* gives WorkSafeBC exclusive authority to establish and manage an Accident Fund to pay for past, current and future claims for workers injured or killed at work. This includes the authority to collect premiums from employers based on their payroll and establish a reserve to fund future liabilities. WorkSafeBC also generates additional income from the investment of the funds it collects from employers. Government does not provide WorkSafeBC any funding.

WorkSafeBC currently has more assets than liabilities in the Accident Fund as a result of the accumulation of funds. The legislation does not provide explicit direction on how to manage this surplus. By amending the act, the Province will address this gap in legislation to ensure that there is a process to manage the surplus funds collected from employers. Read the government [news release](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|-------------------------|--|
| Designated Institutions Regulation (158/2003) | Mar. 9/17 | by Reg 102/2017 |
| Employment and Assistance Regulation (263/2002) | Apr. 1/17 | by Regs 96/2017 and 118/2017 |
| Employment and Assistance for Persons with Disabilities Regulation (265/2002) | Apr. 1/17 | by Regs 95/2017 , 96/2017 and 118/2017 |
| Employment Standards Regulation (396/95) | Mar. 1/17 | by Reg 56/2017 |
| Firefighters' Occupational Disease Regulation (131/2017) | Mar. 31/17 | by Reg 127/2017 |
| Long Term Disability Fund Interest Regulation (51/2017) | NEW Apr. 1/17 | see Reg 51/2017 |

| | | |
|--|-----------|---|
| Public Service Benefit Plan Act | Apr. 1/17 | by 2016 Bill 10, c. 3, sections 13 and 14 only (in force by Royal Assent), Budget Measures Implementation Act, 2016 |
| Social Services Employers Regulation (84/2003) | Mar. 9/17 | by Reg 101/2017 |

LOCAL GOVERNMENT

Local Government News:

Unrestricted Matters in the *Building Act*: The Plot Thickens

The Minister of Natural Gas Development and Minister Responsible for Housing and Deputy Premier, whose portfolio includes the [Building Act](#), has amended the [Building Act General Regulation](#). Among other things, the Minister has specified examination and continuing education requirements for different classes of qualified building officials, and added to the list of "unrestricted matters". Unrestricted matters are matters in relation to which local building requirements, which might otherwise be rendered ineffective by [s. 5](#) of the *Building Act*, will still apply. The list of unrestricted matters, set out in [s. 2](#) of the Regulation, now includes the following new items:

- a. Water supply for firefighting
- b. Flood construction levels and setbacks
- c. Heritage buildings
- d. Fire sprinklers and fire sprinkler systems
- e. Accessibility of a building to persons with disabilities
- f. Adaptability of dwelling units

Items d. to f. in the above list are referred to as "time-limited unrestricted matters", because a local building requirement relating to these matters is only unrestricted if it is enacted on or before December 15, 2017, and is not amended after that date. Read the [full article](#) by [Guy Patterson](#) of Young Anderson Barristers & Solicitors.

Richmond Expands Regulation of Short-term Rentals

Richmond City Council has approved recommendations to amend its bylaws and licensing requirements for short-term rentals to address concerns related to illegal, hotel-like operations and other negative impacts on neighbourhoods. With the proposed changes, existing regulations will be enhanced and enforcement will be intensified along with increased fines and penalties.

"The new amendments to address short-term rentals will enable us to respond to neighbourhood concerns from our residents and encourage longer term rentals," says Richmond Mayor Malcolm Brodie. "With these amendments, we have a measured approach to protect our neighbourhoods with clear, enforceable requirements." Read the [press release](#).

New Sprinkler Requirements for Four-storey Wood-frame Buildings

An update to the BC Building Code will require fire sprinklers to be installed on the balconies of all new four-storey wood-frame residential buildings.

Under the current BC Building Code, sprinklers generally are not required on balconies or in attics in residential buildings four storeys and under, but are generally required in residential buildings greater than four storeys.

The updated 2015 National Building Code, on which BC Building Code updates are based, requires sprinklers on balconies of four-storey residential buildings. Although the next edition of the BC Building Code is not scheduled to be adopted until late 2017, the Province is taking steps to adopt the new sprinkler standards sooner. The new sprinkler requirements will take effect on July 20, 2017. Read the government [news release](#).

A Legal Duty to Document?

On March 8, 2017, the Minister of Finance, the Honourable Mr. Michael de Jong, tabled Bill 6, the [Information Management \(Documenting Government Decisions\) Amendment Act, 2017](#). The intent of the Bill is to enact the recommendation of the former Information and Privacy Commissioner, Elizabeth Denham, to legislate a duty to

document key governmental decisions.

If enacted, the Bill will amend the [Information Management Act](#) to provide the Chief Records Officer with the ability to issue directives and guidelines to government bodies subject to the Act to:

- create records that adequately record decisions connected to the government body's business; and
- determine what constitutes an adequate record of those decisions.

The Bill will also make the designated heads of government bodies responsible to ensure their government body has an adequate system in place to create and maintain adequate records of its decisions and to make sure "reasonable steps" are taken to ensure the government body is complying with any directives or guidelines issued by the Chief Records Officer.

Bill 6 will only affect government bodies that are subject to the *Information Management Act*. Local government bodies such as regional districts and municipalities are not expected to be affected by this new legislation. Nevertheless, any directives or guidelines made by the Chief Records Officer may be informative to local governments in terms of record retention policies. Read the [full article](#) by Rosie Jacobs of Young Anderson Barristers & Solicitors.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|------------------------------|---------------------------------|
| British Columbia Transit Regulation (30/91) | Mar. 1/17 | by Reg 53/2017 |
| Building Act General Regulation (131/2016) | Apr. 1/17 | by Reg 52/2017 |
| Bylaw Notice Enforcement Regulation (175/2004) | Mar. 1/17 | by Reg 37/2017 |
| Class Size and Compensation Regulation (52/2012) | Mar. 28/17 | by Reg 121/2017 |
| Commuter Rail Operating Agreement Regulation (439/95) | REPEALED Mar. 1/17 | by Reg 53/2017 |
| Designated Property Regulation (423/81) | REPEALED Mar. 1/17 | by Reg 53/2017 |
| Elevating Devices Safety Regulation (101/2004) | Mar. 8/17 | by Reg 45/2017 |
| Gaming Control Regulation (208/2002) | Mar. 1/17 | by Reg 57/2017 |
| Gas Safety Regulation (103/2004) | Mar. 8/17 | by Reg 45/2017 |
| Greater Vancouver Transit Conduct and Safety Regulation (87/99) | Mar. 27/17 | by Reg 110/2017 |

| | | |
|--|------------------------------|---|
| Home Owner Grant Regulation (100/2002) | Mar. 1/17 | by Reg 59/2017 |
| Interest Rate Under Various Statutes Regulation (386/92) | Mar. 1/17 | by Reg 73/2017 |
| Learning Improvement Fund Regulation (53/2012) | Mar. 28/17 | by Reg 121/2017 |
| Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004) | Mar. 8/17 | by Reg 45/2017 |
| Prevention of Cruelty to Animals Act | Mar. 16/17 | by 2017 Bill 17, c. 3, section 12 only (in force by Royal Assent), Prevention of Cruelty to Animals Amendment Act, 2017 |
| Safety Standards General Regulation (105/2004) | Mar. 8/17 | by Reg 45/2017 |
| School Tax Administration Fee Regulation (138/91) | REPEALED Mar. 1/17 | by Reg 70/2017 |
| School Tax Administration Fee Regulation (70/2017) (replaces Reg 138/91) | NEW Mar. 1/17 | see Reg 70/2017 |
| School Tax Exemptions and Refunds (Approved and Eligible Hydroelectric Power Projects) Regulation (144/2005) | Mar. 1/17 | by Reg 69/2017 |
| South Coast British Columbia Transportation Authority Act | Mar. 1/17 | by 2015 Bill 15, c. 13, section 59 only (in force by Reg 61/2017), Motor Vehicle Amendment Act, 2015 |
| Taxation (Rural Area) Act Regulation (71/2017) | Mar. 1/17 | by Reg 71/2017 |
| Victoria Regional Transit Commission Regulation No. 38-2017 | NEW Mar. 9/17 | see Reg 100/2017 |

MISCELLANEOUS

Miscellaneous News:

Upcoming Changes to Small Claims Court and Civil Resolution Tribunal

On March 20, 2017, the BC Government announced changes affecting the BC Provincial (Small Claims) Court, which will come into effect on June 1, 2017. These changes introduce new, simplified procedures for dispute resolution of smaller monetary claims and increase the limit on claims within Small Claims Court jurisdiction. BC's Civil Resolution Tribunal (CRT) is an online dispute resolution tribunal. Currently, the CRT resolves strata disputes. Beginning June 1, the CRT will also handle monetary claims up to \$5,000. These claims may be for disputes concerning contracts, debts, personal injury, personal property and consumer issues. Also beginning June 1, the monetary limit for civil claims heard in Small Claims Court will increase from \$25,000 to \$35,000. If you currently have a claim in Small Claims Court for \$25,000, you will be able to increase the amount of your claim or counterclaim up to \$35,000. Similarly, if you currently have a claim in BC Supreme Court for \$25,001 to \$35,000, you can apply to have your case transferred to Small Claims Court.

GC Panel Slams CASL Private Right of Action, Warns of Class Actions

In-house experts say class action lawyers are rubbing their hands together and counting the days until phase two of Canada's Anti-Spam Law comes into effect July 1, ushering in the much feared private right of action.

The PRA means an individual or organization that feels they have been affected by a contravention of the legislation can litigate to enforce the new private rights.

"I have met with a couple of the plaintiff class action firms who are counting the number of sleeps until July 1," said Peter Clausi, executive vice president corporate affairs and general counsel at GTA Resources and Mining Inc. "I think they are going to wind up being the Wade Boggs of litigation – they're going to go to the hall of fame hitting singles."

Clausi was speaking Monday [April 3rd] as part of a panel entitled Get Smart: Conquering CASL and the New Private Right of Action at the Canadian Corporate Counsel Association's national conference in Toronto. He doesn't think there will be multiple multi-million dollar settlements, but does predict there will be "strike suits" given the standard that the plaintiff has to meet which is "almost nothing and then damages are assumed."

"I have never seen a greater dichotomy between the pervasiveness of the legislation and the lack of knowledge about it than with CASL," said Clausi. "We all think we've complied with CASL but I can pretty much guarantee you that there's no one in the room in compliance with CASL today. It is a horrible, pervasive, invasive piece of legislation. It ought to keep you awake at nights." Read the [full article](#) by [Jennifer Brown](#) and published on *Legal Feeds*.

Selecting the Appropriate Expert

The recent decision of the British Columbia Supreme Court in *Khudabux v. McClary*, [2016 BCSC 1886](#), highlights the importance of selecting appropriate medical experts in the defence of personal injury claims.

In *Khudabux*, Mr. Justice A. Saunders reviews the pitfalls of relying on expert reports from orthopaedic surgeons to rebut allegations of soft tissue injuries. In *Khudabux*, the Plaintiff sought damages for injuries suffered in two motor vehicle accidents. At trial, both parties submitted expert medical reports containing opinion on the extent of the Plaintiff's injuries and her prognosis. As is common practice, the Defendant submitted an expert report from an orthopaedic surgeon in support of its position that the Plaintiff had suffered only minimal injuries from one of the accidents. Writing generally on the use of the expert reports of orthopedic surgeons to refute soft tissue injury claims, Mr. Justice A. Saunders stated that:

Of course, there may be situations in which such a specialist feels able to offer opinion evidence that sheds light on the nature and scope of such complaints. But it is also the case that a clash between experts pitting an orthopaedic surgeon against a physiatrist, specializing in rehabilitation medicine – or even, as in the present case, against a family physician – can possibly leave counsel in the position of the hoodlum in the film *The Untouchables*, at the point when he realizes too late that he has brought a knife to a gunfight.

Read the [full article](#) by [David Buxton-Forman](#) of Clark Wilson LLP.

| Act or Regulation Affected | Effective Date | Amendment Information |
|----------------------------|----------------|-----------------------|
| Guide Dog and Service | | |

| | | |
|--|--------------------------|----------------------------------|
| Dog Regulation (223/2015) | Mar. 1/17 | by Reg 58/2017 |
| Provincial Immigration Programs Regulation (20/2017) | Mar. 31/17 | by Reg 128/2017 |
| Subdividable Property Designation (Deltaport Causeway) Regulation (122/2017) | NEW Mar. 29/17 | see Reg 122/2017 |

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Pub Found Partly at Fault for Crash Caused by "Visibly Intoxicated" Patron

Reasons for judgement were released [March 9, 2017] by the BC Supreme Court, Vancouver Registry, finding a Pub jointly and severally liable for a collision by a patron who was served alcohol to the point of visible intoxication.

In today's case ([Widdows v. Rockwell](#)) the Defendant drove a vehicle and collided with the Plaintiff pedestrian. The crash caused severe injuries, including brain damage. At the time the Defendant was "quite literally, falling-down drunk".

Prior to the crash the Defendant was drinking at a local pub. In finding the pub jointly and severally liable for over serving a patron and failing to take reasonable steps to ensure he was not driving Mr. Justice Kent provided the following reasons: Read the [full article](#) by [Erik Magraken](#) of MacIsaac & Company, published on his blog *BC Injury Law*.

Slow Down and Move Over – RCMP Reminder

Just over two years ago on January 1, 2015 the law was amended to require motorists to Slow Down and Mover Over, for all vehicles stopped alongside the road, which have flashing red, blue or amber lights. This change under the [Motor Vehicle Act Regulations](#) enhances safety for people working on roadways, such as police officers, paramedics, and fire crews. The laws also apply to maintenance crews, tow truck operators, or any other people authorized to work along roadways and utilize emergency lights. Read the full TMTV [news article](#).

Uber Vancouver: BC Government Announces Support for Ride-hailing Services

The BC Liberals turned ride-hailing into an election issue Tuesday [March 7th], promising that if they win at the polls then British Columbians will be able to hire an Uber driver by Christmas.

Opposition New Democrats immediately fired back, announcing that if they win the election, the Liberal plan will never become a reality.

Transportation Minister Todd Stone unveiled the most significant overhaul of BC's taxi industry in decades, effectively ending the industry's monopoly on service if the Liberals are re-elected on May 9. BC would green light ride-hailing companies like Uber and Lyft, while at the same time offering cash support and a relaxation of the rules to existing taxi companies to try to prevent their business from being devastated by the competition, he said. Read *The Vancouver Sun* [article](#) by Joanne Lee-Young and Rob Shaw.

CVSE Bulletins & Notices

The following circular has been posted in March by CVSE:

- [Circular 03-17](#) Transition period between Paper Logs and Electronic Recording Devices

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

| Act or Regulation | Effective Date | Amendment Information |
|-------------------|----------------|-----------------------|
|-------------------|----------------|-----------------------|

| Affected | | |
|---|------------------------------|---|
| Emission Inspection Exemption Regulation (320/92) | REPEALED Mar. 1/17 | by Reg 61/2017 |
| Exhaust Emission Standards Regulation (274/2000) | REPEALED Mar. 1/17 | by Reg 61/2017 |
| Motor Vehicle Act Regulations (26/58) | Mar. 1/17 | by Regs 61/2017 , 64/2017 and 65/2017 |
| Motorcycle Safety Helmet Exemption Regulation (237/99) | Mar. 1/17 | by Reg 62/2017 |
| Permitted Cost of Services Regulation (286/99) | REPEALED Mar. 1/17 | by Reg 22/2017 |
| Special Direction IC2 to the BC Utilities Commission (307/2004) | Mar. 3/17 | by Reg 81/2017 |
| | Mar. 28/17 | by Reg 119/2017 |
| Violation Ticket Administration and Fines Regulation (89/97) | Mar. 1/17 | by Reg 74/2017 |
| | Mar. 27/17 | by Reg 110/2017 |
| | Mar. 31/17 | by Reg 127/2017 |

PROPERTY & REAL ESTATE

Property and Real Estate News:

Mortgage Lending: Update and Practice Points

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

In this paper from *Residential Real Estate Conference–2016*, the author presents interesting recent cases that involve various aspects of mortgage lending and provides practical take aways for each case. Click [here](#) to view a pdf version of the paper.

New Condo-Sale Rule Brings Relief to Many, Grief to Some

BC law seeks to end protracted sales process and provide financial escape route for owners in rundown buildings
Developers, lawyers, realtors and some condominium owners rejoiced last summer when the BC government changed the law to make it easier for strata corporations to sell assets.

The government's [Bill 40](#) lowered the bar so that if 80% of the owners in a strata corporation vote to dissolve that entity and sell the site to a developer, they can petition BC Supreme Court for final approval.

The court then takes into consideration whether owners who oppose the sale will suffer a significant hardship. Court approval is not a rubber-stamp process, but proposals are now a lot more likely to find success in court than they would have before Bill 40 became law. Read the *Business in Vancouver* [article](#).

Court of Appeal Upholds Mortgage Exit Fee in Face of Interest Act Challenge

Section 8 of the [Interest Act](#), R.S.C. 1985, c. I-15, prohibits any "fine, penalty or rate of interest . . . that has

the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears." Relying on this provision, borrowers often challenge fees and charges that borrowers levy when seeking to enforce a secured debt that has gone into arrears. For the defaulting borrower, it can slow down the lender's effort to seek judgment and, if successful, can amount to relief from portions of the debt being claimed. However, what section 8 actually means and how it applies in any given case is a question that constantly bedevils courts.

Two recent decisions illustrate the practical difficulties in categorizing the nature of charges accruing to a secured debt and whether they contravene the *Interest Act*. Arguably, one decision, [Krayzel Corp. v. Equitable Trust Co.](#), 2016 SCC 18, does away with prior judicial distinctions that made commercial sense (though were difficult to apply) and makes relief under section 8 more likely. The other decision, [Bankers Mortgage Corporation v. Plaza 500 Hotels Ltd.](#), 2017 BCCA 66, illustrates a clear mechanism for lenders to avoid the perils of section 8 of the *Interest Act*. Read the [full article](#) by Peter Roberts of Lawson Lundell LLP.

BC Government Enacts New Exemption and Refunds For Foreign Entity Tax

On March 15, 2017, the BC Government issued [Order In Council 152/17](#) (the "OIC"), which creates a retroactive exemption from the 15 percent Foreign Entity Tax (the "Tax") for foreign nationals applying for permanent residency under BC's Provincial Nominee Program, and provides refunds for certain purchasers who have previously paid or are required to pay the Tax and later become Canadian citizens or permanent residents. The OIC enacts these changes by way of amendments to the [Property Transfer Tax Regulation](#). For additional information on the Tax, see our previous posts [here](#) and [here](#).

Inclusion in BC's Provincial Nominee Program (BC PNP) places a foreign national into a "fast track" stream with respect to its permanent residency application. The Program is divided into two categories: entrepreneurial nominees (i.e. foreign nationals with high net-worth and business or management experience) and skilled nominees (i.e. foreign nationals filling in-demand occupations). Current foreign national provincial nominees who purchased a principal residence on or after August 2, 2016 (the effective date of the Tax), and paid the Tax, have 18 months following the date of their purchase to claim a refund for the additional tax. The new exemption is available for provincial nominees who are foreign nationals purchasing principal residences in the Greater Vancouver Regional District. The exemption applies to the purchase of an improved residential dwelling, provided the provincial nominee intends to inhabit the dwelling as their principal residence. The exemption can only be used by provincial nominees once, and is not available for companies or taxable trustees. Read the [full article](#) by [Peter Tolensky](#) and [Nicholas Shon](#) of Lawson Lundell LLP.

CRT Roundup – Bylaws, Repairs, and Significant Change in Use or Appearance of Common Property

[Fournier v The Owners, Strata Plan LMS 768](#), 2017 CRTBC 11 ([PDF](#)), concerned decisions taken at, and actions flowing from, a strata corporation's special general meeting. At the meeting, two resolutions were approved: one amending the strata corporation's bylaws to add a rental-restriction bylaw, the other authorizing the strata corporation to spend money from the contingency reserve fund to repair a deck attached to a strata lot. An owner challenged both "events that occurred at, and as a result of," the special general meeting, alleging an improper filing of consolidated bylaws in the land title office and an improper expenditure of funds to repair the deck.

According to "Land Title Office records," the strata corporation had registered bylaws in July 1996. These 1996 bylaws provided "that the strata corporation shall maintain and repair the exterior of the buildings, excluding balconies and patios included in the strata lot, but including the decorating of the whole of the exterior of the buildings." Since the advent of the [Strata Property Act](#) in 2000, these bylaws were only amended once (adding an age restriction). Read the [full article](#) by Kevin Zakreski with BCLI.

House Buyer Beware: Landmark BC Court Ruling Will Shake Real Estate Industry

A BC Supreme Court ruling will send shock waves through the arm of the Canadian real-estate market that is powered by foreign capital, say immigration lawyers.

The ruling targets a weakness in Canadian laws that often leads foreign owners of real estate in cities such as Metro Vancouver and Toronto to claim they are "residents of Canada for tax purposes" when they are not.

The landmark BC decision requires notary public Tony Liu to pay his client more than \$600,000 because Liu failed to adequately determine whether the Vancouver house his client was buying for \$5.5 million had been owned by a tax resident of Canada.

As a result, the Canada Revenue Agency did not get paid, at the time of the sale, the 25 per cent capital gains tax it charges non-resident sellers of Canadian property on any profit they make on the sale.

So the CRA later demanded the buyer pay the \$600,000 in tax. The buyer, in turn, sued Liu, arguing Liu failed to discover the seller was not a tax resident of Canada.

The CRA considers people who don't live in the country at least six months a year and don't pay income taxes here to be foreign property investors and speculators and thus subject to capital gains taxes.

Three Canadian immigration lawyers said the CRA [tax-residency rule is often not enforced](#), even in overheated housing markets in Vancouver and Toronto that are in part fuelled by offshore money.

The complex ruling published this month by BC Supreme Court Justice Kenneth Affleck strikes to the heart of a gaping hole in Canadian tax, immigration and property-transfer law, say the immigration lawyers. Read *Vancouver Sun* [article](#) by Douglas Todd.

| 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 |
| Interest Rate Regulation (75/2017) | NEW Apr. 1/17 | see Reg 75/2017 |
| Property Transfer Tax Exemption Regulation No. 6 (443/94); Property Transfer Tax Exemption Regulation No. 7 (93/99); Property Transfer Tax Exemption Regulation No. 8 (360/2005); Property Transfer Tax Exemption Regulation No. 9 (189/2006); Property Transfer Tax Exemption Regulation No. 12 (328/2010); Property Transfer Tax Exemption Regulation No. 13 (329/2010); Property Transfer Tax Exemption Regulation No. 14 (56/2014); Property Transfer Tax Exemption Regulation No. 15 (57/2014); Property Transfer Tax Exemption Regulation No. 16 (58/2014); Property Transfer Tax Exemption Regulation No. 17 (59/2014); Property Transfer Tax | REPEALED Mar. 1/17 | by Reg 68/2017 |

| | | |
|---|---------------------------------------|---------------------------------|
| Exemption Regulation No. 18 (87/2015); Property Transfer Tax Exemption Regulation No. 19 (88/2015); Property Transfer Tax Exemption Regulation No. 20 (89/2015); Property Transfer Tax Exemption Regulation No. 21 (156/2015); Property Transfer Tax Exemption Regulation No. 23 (156/2015) | | |
| Property Transfer Tax Regulation (74/88) | RETROACTIVE to Aug. 2/16 | by Reg 108/2017 |
| | Mar. 31/17 | |
| Real Estate Services Regulation (506/2004) | Apr. 1/17 | by Reg 3/2017 |

WILLS & ESTATES

Wills and Estates News:

Court Orders Interim Distribution under Section 155 of the Wills, Estates and Succession Act

In a recent decision, [Davis v. Burns Estate](#), 2016 BCSC 1982, the Supreme Court of British Columbia allowed an interim distribution to be made to a beneficiary of a will under [section 155](#) of the [Wills, Estates and Succession Act](#) pending the resolution of a wills variation claim. Section 155 prohibits the personal representative from making a distribution after someone has started a wills variation claim without the consent of the Court. As far as I know, this is the first reported decision dealing with an interim distribution pursuant to section 155, although there were cases under the now repealed [Wills Variation Act](#) considering whether to allow an interim distribution under that Act (which contained a prohibition on distribution during the first six months following probate, but did not expressly prohibit a distribution after the six-month period if a claim had been commenced).

Patricia Burns died on March 17, 2015. In her will dated October 23, 2010, she left 20% of the residue of her estate to Brent Dale, with whom she lived, and 80% to her friend George Quan, disinheriting her daughter, Leslie Davis. Mr. Dale provided evidence that he and Ms. Burns were in a marriage-like relationship. The gross value of the estate was over \$2.5 million. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

Probating a USA Will and BC Assets

Obtaining a grant of probate from the BC court provides assurance for anyone dealing with an estate that the deceased's will is legally valid and that the executor has authority to administer the estate.

With the increasing number of foreign buyers of real estate in BC, the probate process can get complicated since each jurisdiction has its own probate procedures. If the deceased lived primarily in another jurisdiction but owned land or other assets in BC, the executor of the estate will need to go through probate in BC in order to deal with the BC assets. Our current legislative framework provides two methods for dealing with this issue: (1) direct probate of a foreign will in BC; and (2) having foreign probate confirmed (technically referred to as 'resealing') in BC.

Direct probate of a foreign will in BC allows an executor to apply directly to a BC court for probate, provided there is no need to apply for a grant in another jurisdiction. Read the [full article](#) by Charlene Joanes of Clark Wilson LLP.

Daughter Receives \$185,000 from Will for Value of Mother's Home – Home Was Sold Before Mother's Death

– *Forbes v. Millard Estate*, [2017 BCSC 361](#)

The testatrix died February 9, 2015, aged 91, and was survived by 3 children. The will, which was made in September of 2000, detailed that her daughter, the petitioner in this action, was to receive "any property which I may own and be using as a home at the date of my death". At the time the will was made, she owned a home on Hornby Island, but it was later sold and a home in Courtenay, BC, was purchased. The testatrix's mental health declined after 2002 and by 2004 she was incompetent, could no longer live independently and she was then placed in a care home. Due to the increasing cost of her care, the deceased's attorneys, two of her children, under an enduring power of attorney, sold her property for \$185,000.

The dispute surrounded the bequest to Cherie Forbes of "any property which I may own and be using at the date of my death". As the property had been sold before her death, the testatrix did not own a home. The specific issue in the petition was whether the petitioner should receive an amount equivalent to the proceeds of sale of the property as if the will had contained a specific gift to the petitioner of that amount. The common law would normally point to the gift having adeemed, or failed, as there was a legal presumption the testator intended to revoke the gift. But, WESA came into effect in March 2014 and provided an important section: Read the [full article](#) published by the Wills Variation Group of MacIssac & Company.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

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