

# Quickscribe Reporter

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Vol: XV – Issue: IX – September 2016

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## QUICKSCRIBE NEWS:

### Fall 2016 Session of the BC Legislature Cancelled

Parliament was originally scheduled to start the fall session Monday (October 3), but notice of the cancellation came the same day the session was to begin. The next session is scheduled to begin in the spring, just prior to the upcoming provincial election on May 9, 2017.

### New Video Tutorials Published

- [Alerts \(13 mins\)](#) Did you know that there are four different types of alert services found on Quickscribe? This new YouTube video will show how easy it is for you to set up custom alerts that will notify you of upcoming and recent changes and new annotations posted to laws of your choosing.
- [Historical Research Tools \(11 mins\)](#) This video will introduce you to a number of powerful historical research tools found on Quickscribe.

These and other videos (including the recent [General Overview](#) tutorial video) are accessible via the help menu, located on the top menu bar when you first login. A video that covers the new search functions in Quickscribe is in the works and will be available shortly.

### Latest Annotations

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

- [John-Paul Boyd](#), Canadian Research Institute For Law And The Family – [Family Law Act](#)
- [Michael Bain](#), Hamilton Howell Bain & Gould – [Strata Property Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management 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](#)



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## COMPANY &amp; FINANCE

## Company and Finance News:

**New Rules Give Franchises the Certainty They Need to Succeed in BC**

The new [Franchises Act](#) and regulations, which come into force on Feb. 1, 2017, will help ensure that a prospective entrepreneur who wants to open a franchise in British Columbia has the information and support needed to make an informed decision about whether to invest in the franchised business.

The new legislation will provide important legal protections for British Columbia-based franchisees who operate a franchise. This includes regulating the sale of franchises, requiring that contracts include pre-sale disclosure requirements, and providing more legal rights and protections to help parties resolve disputes. The legislation will provide certainty for franchised businesses, a move the Province hopes will encourage franchising efforts in BC, generating investment and employment opportunities as well as providing direct and indirect economic benefits to the communities in which they operate.

The act will also increase transparency for new franchisees, requiring franchisors to disclose all information that will significantly affect the franchisee's decision to purchase the franchise, including background information on legal, financial and bankruptcy history. Read the full government [news release](#).

**"Such Consent Not to Be Unreasonably Withheld..."**

Most commercial enterprises believe that they act reasonably in conducting their business affairs and operations. However, reasonableness, like beauty, can often be in the eye of the beholder. What seems reasonable to an entrepreneur borrower looking to expand its operations may not be seen as reasonable in the eyes of a lender that would prefer its borrower to follow a slower and more sustainable growth plan.

Credit Agreements typically contain a series of covenants that restrict or limit certain activities of borrowers. Recognizing their likely future need for a waiver of a particular limitation or prohibition to permit a specific one-time action, borrowers will often request carve-outs from the covenant pattern by adding a link to the words "unless the Lender otherwise consents". Borrowers will also typically try to tie down the discretion of their lenders when it comes to providing their consent. The addition of the words, "such consent not to be unreasonably withheld", is a frequent borrower request. It is important for lenders to understand the implications of any agreement to allow this reasonableness standard to be imported into a future request for consent to a particular covenant variation. Read the [full article](#) by [Richard C. Dusome](#) of Gowling WLG.

**Hedge Fund Investments Survive Section 94.1 Challenge**

*Although based in low-tax jurisdictions, Tax Court finds business reasons for investments overshadowed their tax benefits.*

Section 94.1 of the [Income Tax Act](#) (Canada) is an anti-avoidance rule aimed at attempts to divert investment income to an offshore entity in a low (or no) tax jurisdiction. In *Gerbro Holdings Company v. The Queen*, the Tax Court of Canada considered, for the first time, the application of this rule to investments in offshore hedge funds. The Court concluded that the underlying assets of such funds may be "portfolio investments" for purposes of section 94.1, but the section did not apply in *Gerbro* because none of the main reasons for investing in the hedge funds was to defer or avoid Canadian taxes.

**Section 94.1**

Section 94.1 requires a deemed income inclusion where a Canadian investor has an interest in a non-resident entity, and two conditions are met:

Read the [full article](#) by [Marianne Kennedy Beaulne](#) of Stikeman Elliott.

**BC Securities – Policies & Instruments**

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

- [31-346](#) – CSA Staff Notice 31-346 – *Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers*
- [45-321](#) Multilateral CSA Staff Notice 45-321 *Frequently Asked Questions about the Investment Dealer Prospectus Exemption*
- [81-102](#) – CSA Notice and Request for Comment – Modernization of Investment Fund Product Regulation – Alternative Funds
- [11-332](#) – CSA Staff Notice 11-332 – *Cyber Security*

[45-308](#) – CSA Staff Notice 45-308 (Revised) – *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions*

- [91-305](#) – CSA Multilateral Staff Notice 91-305 – Frequently Asked Questions relating to Multilateral Instrument 91-101 *Derivatives: Product Determination* and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*

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

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Bonding Regulations (11/68)	Sept. 20/16	by <a href="#">Reg 221/2016</a>
Business Practices and Consumer Protection Act	Sept. 1/16	by 2015 Bill 7, c. 5, section 84 only (in force by <a href="#">Reg 140/2016</a> ), <a href="#">Private Training Act</a>
Cooperative Association Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 5 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Credit Union Incorporation Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 6 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Film and Television Tax Credit Regulation (4/99)	Oct. 1/16	by <a href="#">Reg 183/2016</a>
Home Inspector Licensing Regulation (12/2009)	Sept. 1/16	by <a href="#">Reg 70/2016</a>
Insurance Premium Tax Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 8 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
National Instrument 23-101 <i>Trading Rules</i> (252/2001)	Oct. 1/16	by <a href="#">Reg 163/2016</a>
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Sept. 1/16	by <a href="#">Reg 148/2016</a>
Tobacco and Vapour Products Control Act (formerly titled <i>Tobacco Control Act</i> )	Sept. 1/16	by 2015 Bill 14, c. 11, sections 1 to 16 only (in force by <a href="#">Reg 149/2016</a> ), <a href="#">Tobacco Control Amendment Act, 2015</a>
Tobacco and Vapour Products Control Regulation (232/2007) (formerly titled <i>Tobacco Control Regulation</i> )	Sept. 1/16	by <a href="#">Reg 149/2016</a>
Tobacco Tax Act	Sept. 1/16	by 2015 Bill 14, c. 11, sections 18 to 21 only (in force by <a href="#">Reg 149/2016</a> ), <a href="#">Tobacco Control Amendment Act, 2015</a>

**ENERGY & MINES**

**Energy and Mines News:**

**Decision to Approve Pacific Northwest LNG Facility a Boost to Industry**

The Liberal government's decision to approve the Pacific Northwest LNG Project (Project) demonstrates that the federal government is prepared to make decisions on proposed resource development projects to get Canada's resources to market. The September 27, 2016, [Decision Statement](#) [PDF] approving the Project signals to industry, investors and the public that Canada's natural resources can, and will, be developed in a responsible and sustainable manner. The decision was announced at a joint press conference in British Columbia held by three federal ministers (Environment and Climate Change Minister Catherine McKenna, Natural Resources Minister Jim Carr and Fisheries Minister Dominic LeBlanc) and BC Premier Christy Clark.

The Project proposes to convert natural gas to liquefied natural gas (LNG) for export to Pacific Rim markets in Asia. This decision – after multi-year federal and provincial environmental assessments – could spark significant economic development across the natural gas industry in BC. If the Project receives investment approval, it will enable one of Canada's largest resource development projects, with [up to \\$36 billion](#) of new terminal facilities, pipeline infrastructure and upstream development. Read the [full article](#) by [Jeremy Barretto](#), [Thomas McNerney](#), [Terri-Lee Oleniuk](#) and [Shawn Denstedt, O.C.](#) of Osler, Hoskin & Harcourt LLP.

**Ecofiscal Commission Report Says It's Time to Drop Costly Biofuels Subsidies**

A blue-chip group of economists says federal and provincial government biofuel subsidies are an expensive experiment and it's time to let them expire.

A study released Tuesday [October 4<sup>th</sup>] by Canada's Ecofiscal Commission finds that ethanol and biodiesel policies cost consumers and governments about \$640 million a year – while cutting Canada's greenhouse gas emissions by about three million tonnes annually.

Put another way, the report says that every tonne of carbon dioxide reduced by using ethanol costs at least \$180 while biodiesel reductions cost at least \$128. And even those high price tags, states the report, may severely under-represent the true cost per tonne of CO<sub>2</sub> reductions when the full life-cycle emissions of biofuels are taken into account.

The biofuels industry lobby group, Renewable Industries Canada, was consulted by the commission during the report's preparation but called the study's conclusions "flawed and skewed."

The report comes a day after the federal Liberal government announced it would impose on provinces and territories a mandatory carbon price of \$10 a tonne starting in 2018, increasing to \$50 a tonne in 2022, if those jurisdictions refuse to adopt their own carbon price or cap-and-trade plan. Read the full *Vancouver Sun* [article](#).

**AME Issues Important Environmental Regulatory Reviews and Health & Safety Update**

The Association for Mineral Exploration issued the following Update on its public site:

**Situation**

Following last year's federal election result, and the provincial Auditor General's report, both governments are currently reviewing environmental procedures and regulations with a view to strengthening protections and enhancing public confidence in regard to environment, health and safety. Protecting the environment and health and safety are very important to AME members. Your input into government's reviews is critical so that any potential changes contemplated to regulations will also result in more timely and cost-effective decision-making and improved procedures for the mineral exploration and development industry.

Read the full AME [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Mineral Tenure Act Regulation (529/2004)	Sept. 1/16	by <a href="#">Reg 50/2016</a>

Petroleum and Natural Gas Act	Sept. 1/16	by 2015 Bill 15, c. 4, sections 31 to 33 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Renewable and Low Carbon Fuel Requirements Regulation	Sept. 1/16	by <a href="#">Regs 50/2016</a> and <a href="#">190/2016</a>

## FAMILY & CHILDREN

### Family and Children News:

#### BC Govt Seeking Input on *Family Law Act*

The [BC government's Civil Policy and Legislation Office](#) has released two Discussion Papers on issues pertaining to BC's [Family Law Act](#). Their website explains that:

The *Family Law Act* came fully into force on March 18, 2013, replacing the [Family Relations Act](#). The new act significantly changed the way guardianship and parenting arrangements are conceptualized within family law in British Columbia, introducing new terminology as well as a new framework for determining parents' responsibilities towards their children. The *Family Law Act* also reformed the division of property, listing the types of property that are excluded from family property and generally will not be divided up after the parties separate.

Whenever new legislation is enacted, it is anticipated the courts will provide guidance on how the new legislative provisions are to be interpreted as cases are decided using the new law. There are now three years of case law interpreting the *Family Law Act*. Feedback received by government suggests that this is an opportune time to consider particular issues that have been raised related to guardianship and division of property under the *Family Law Act*.

Read the [full article](#) posted by Jennifer Woodruff on *JP Boyd on Family Law: the Blog*, by Collaborative Divorce Vancouver.

#### New Developments in the Law of Property Division in BC

On April 28, 2016 the British Columbia Court of Appeal came out with a decision called *V.J.F. v. S. K. W.*, [2016 BCCA 186](#). This decision called into question how property is to be divided in BC upon the breakdown of a spousal relationship under the [Family Law Act](#).

In this particular case, a husband and wife separated after 10 years together. The parties received 2 million from the sale of a property that was sold after they separated. This property was acquired entirely by funds given as a gift to the husband. However, the husband had transferred the property into the wife's sole name before it was sold in order to protect it from creditors. The Court found that the proceeds of sale were no longer "excluded property" because in putting the property in the wife's name, there was a presumed gift from the husband to the wife.

Why is this case important? The *Family Law Act* came into force as new legislation in the Spring of 2013. This new legislation changed many things in the Law around property division. One of the changes was that the new legislation specifically defines "excluded property." Excluded property is property that is excluded from division upon the breakdown of a spousal relationship. Read the [full article](#) by [Leneigh Bosdet](#) of Pushor Mitchell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Adoption Regulation (291/96)	Sept. 1/16	by <a href="#">Reg 50/2016</a>
Child Care Licensing Regulation (332/2007)	Sept. 1/16	by <a href="#">Reg 178/2016</a>
Continuing Care Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 14 and 15 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

Coroners Regulation (298/2007)	Sept. 20/16	by <a href="#">Reg 228/2016</a>
Correction Act Regulation (243/2015)	Sept. 1/16	by <a href="#">Reg 243/2015</a>
Family Maintenance Enforcement Act Regulation (346/88)	Oct. 1/16	by <a href="#">Reg 227/2016</a>
Residential Care Regulation (96/2009)	Sept. 1/16	by <a href="#">Reg 178/2016</a>
Trustee Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 29 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Where Does the Softwood Lumber Agreement Currently Stand?

The [2006 Softwood Lumber Agreement](#) expired on October 12, 2015. While that agreement mandated export measures on Canadian softwood lumber exports destined for the United States, it also protected those lumber exports from the potential imposition of onerous import measures by the U.S. Currently, a 12-month post-termination stand-still period protects Canadian softwood lumber exports from U.S. import measures. However, that residual protection will soon expire. On August 18, 2016, Martin Moen, Canada's Chief Negotiator, provided an [update report](#) to the Standing Parliamentary Committee on International Trade. According to his oral report, if a replacement agreement is not reached by October 12, 2016, there is a "high risk" that U.S. producers will petition the U.S. Department of Commerce for the imposition of high countervailing and antidumping duties. As in the past, these attempts likely will be made on the grounds that Canadian provinces are subsidizing the industry by setting stumpage values that do not reflect market rates and that Canadian exporters are dumping softwood lumber in the U.S. at unfairly low prices. Read the [full article](#) published on the law firm Bull, Housser & Tupper LLP website.

#### Report Urges Better BC Planning on Water

British Columbians should still be worried about drought, water quality and better water planning, says a new report, even though the relatively mild summer failed to cause any water shortage crises.

A University of Victoria POLIS Project on Ecological Governance [report released \[September 21<sup>st</sup>\]](#) said the province should act now to build resistance to drought and floods, protect water for drinking and recreation, ensure future sustainability, more accurately map B.C.'s watersheds and better include water issues in planning natural resource and economic development projects.

"The report is trying to say British Columbia, British Columbians and in fact many Canadians for a long time haven't really thought about water issues a whole lot," said Oliver Brandes, project co-coordinator. "Sure they crop up, the drought of 2015 we think about for a bit, we respond and sometimes it's enough. Sometimes it goes away. And then we forget." Read *The Vancouver Sun* [article](#).

#### Logging Violations Cut through Scenic Mountainside in Port Alberni – Twice

*Investigation launched by watchdog finds logger violated government standards on two occasions*

A heavily logged mountainside in Port Alberni has watchdogs concerned the BC government failed to notice clear violations of provincial forestry practices.

[An investigation](#) launched by BC's Forest Practices Board found a scenic mountainside on the Port Alberni Inlet was over-logged – twice – according to [provincial "visual quality" standards](#), and the ministry of forests was warned of the violations, but failed to act.

"The government's enforcement of visual management in that instance was not adequate or appropriate," said



Tim Ryan, director of the FPB. The area was cut by foresters from the [Tseshaht First Nation](#).

According to the report, in 2011, logging left large scars across the landscape visible from the Port Alberni Harbour – a practice that is not allowed in the area, [according to legislation](#). Read the [CBC article](#).

### Environmental Appeal Board Decisions

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

#### [Environmental Management Act](#)

- [MTY Tiki Ming Enterprises Inc. v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed]
- [West Fraser Mills Ltd.; Catalyst Paper Corporation; Zellstoff Celgar Limited Partnership; Domtar Inc.; Nanaimo Forest Products Ltd. \(aka Harmac\); Kruger Products LP.; Neucel Specialty Cellulose Ltd.; Canfor Pulp LP; Canadian Forest Products Ltd.; Mackenzie Pulp Mill Corporation v. Regional Director, Environmental Management Act](#) [Jurisdiction Confirmed – All Appeals; 28 Appeals Allowed]
- [Greater Vancouver Sewerage and Drainage District v. Director, Environmental Management Act](#) [Preliminary Application – Denied]

#### [Wildlife Act](#)

- [Darren DeLuca vs. Deputy Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Final Decision – Appeal Dismissed]
- [Darren DeLuca vs. Deputy Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Application for Evidence to be Received in Confidence – Allowed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Kitsumkalum-Kitselas Designated Area No. 1 (229/2016)	<b>NEW</b> Sept. 20/16	see <a href="#">Reg 229/2016</a>
Permit Regulation (253/2000)	Sept. 1/16	by <a href="#">Reg 50/2016</a>
	Sept. 20/16	by <a href="#">Reg 222/2016</a>
Pound Districts Regulation (66/81)	Sept. 1/16	by <a href="#">Reg 50/2016</a>
Weed Control Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 12 and 13 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Water Sustainability Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 11 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

## HEALTH

### Health News:

#### **Worker Entitled to Asbestos Records for Government Building He Worked in, But Not List of Employees in Building**

A worker was entitled to asbestos records for the government building he worked in. However, he was not entitled to a list of government employees who worked in the building and therefore who may have been

exposed to asbestos, a BC freedom of information adjudicator has held.

The worker asked for and was given records in relation to air quality and discovery of asbestos in two government buildings. He was denied access to an email containing a list of government employees who worked in the building. Read the [full article](#) by [Adrian Miedema](#) of Dentons.

### **BC Patients Launch Court Challenge over Forced Psychiatric Treatments**

Two people who were forced to receive injection medications and electroconvulsive therapy while involuntarily detained for mental-health reasons are challenging the constitutional validity of forced psychiatric treatments.

Under British Columbia's [Mental Health Act](#), a person who is involuntarily detained is deemed to consent to all psychiatric treatment authorized by a director appointed by the health authority. They are presumed to be incapable of giving, refusing or revoking consent to psychiatric treatment, and cannot appoint a substitute decision maker. There is no statutory requirement to assess whether the person is capable of making decisions.

This is in contrast to the BC legislation that guides general health care, which states that providers cannot give treatment without consent except in urgent or emergency situations. Further, patients can make directives in advance, or have substitute decision makers. Read *The Globe And Mail* [article](#).

### **BC Court Hears Differing Diagnoses on Proper Prescription to Cure Medicare Ills**

Advocates on either side of a polarizing debate over the future of universal public health care in Canada are offering opposing diagnoses on how to rejuvenate what many see as an overburdened medical system.

Jonathan Penner, a lawyer for the British Columbia government, told B.C. Supreme Court on Monday [September 12<sup>th</sup>] that a lawsuit proposing to change the rules around how medicare operates risks undermining the principle of equal medical access for all.

"British Columbians, like other Canadians, are rightfully proud of their public health-care system, and in particular the commitment by Parliament and all the provincial legislatures to the principle that medically necessary services should be based on need rather than ability to pay," Penner said in an opening statement.

"The health-care system is highly complex and the repercussions to various components of that system of striking down those prohibitions are uncertain and problematic." Read *The Vancouver Sun* [article](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Drug Plans Regulation (73/2015)	Sept. 1/16	by <a href="#">Reg 221/2015</a>
Drug Schedules Regulation (9/98)	Sept. 20/16	by <a href="#">Reg 230/2016</a>
E-Health Regulation (129/2011)	Sept. 20/16	by <a href="#">Reg 225/2016</a>
Hospital Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 16 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Hospital Act Regulation (121/97)	Sept. 20/16	by <a href="#">Reg 224/2016</a> and <a href="#">Reg 225/2016</a>
Hospital Insurance Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 17 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>



Laboratory Services Regulation (52/2015)	Sept. 20/16	by <a href="#">Reg 225/2016</a>
Medical and Health Care Regulation (426/97)	Sept. 20/16	by <a href="#">Reg 225/2016</a>
Provider Regulation (222/2014)	Sept. 1/16	by <a href="#">Reg 50/2016</a>
Regional Health Board Records Regulation (224/2016)	<b>NEW</b> Sept. 20/16	see <a href="#">Reg 224/2016</a>
Tobacco and Vapour Products Control Act (formerly titled Tobacco Control Act)	Sept. 1/16	by 2015 Bill 14, c. 11, sections 1 to 16 only (in force by <a href="#">Reg 149/2016</a> ), <a href="#">Tobacco Control Amendment Act, 2015</a>
Tobacco and Vapour Products Control Regulation (232/2007) (formerly titled Tobacco Control Regulation)	Sept. 1/16	by <a href="#">Reg 149/2016</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### Substance over Form? Defining the Modern Employment Relationship

The British Columbia Supreme Court recently applied the "modern approach" to determining whether an employment relationship exists at law in *TCF Ventures Corp. v The Cambie Malone's Corporation*, [2016 BCSC 1521](#).

Tim Fernback applied for the position of CFO which had been advertised as an employment opportunity by The Cambie Malone's Corporation ("CMC"). Ultimately selected for the role, Mr. Fernback proposed a working arrangement whereby he would provide financial and commercial services through his incorporated entity, TCF Ventures Corp. ("TVC"). Mr. Fernback suggested that TVC would render invoices for fees working within a "budget" of \$75,000.00 per year, would charge GST, and that the agreement would have a 30-day termination clause. The services would be provided over three days a week, and TVC would not be required to render services exclusively to CMC.

A formal agreement was never executed, although the parties did generally proceed as Mr. Fernback had suggested. In the course of the work, Mr. Fernback was granted authority over a number of employees, and exercised a substantial amount of autonomy. He was also provided with an office, had a phone local, email accounts, business cards, and a designated parking space. His computer and phone were supplied by CMC, and he participated in CMC's benefits plan and had access to an expense account. Nevertheless, the evidence demonstrated that Mr. Fernback regularly pursued outside business interests and opportunities during the term. Read the [full article](#) by [Dana F. Hooker](#) of DLA Piper.

#### After Delay, BC Agrees to Back Ottawa's Proposal to Expand Canada Pension Plan

The British Columbia government has given its blessing to enhancing the Canada Pension Plan, a critical vote of support that opens the door for Ottawa to gradually increase contributions and retirement benefits.

In a statement Tuesday [October 3<sup>rd</sup>], the B.C. government said it decided to back the proposal after considering feedback from stakeholders.

That was quickly followed by a declaration of victory from Prime Minister Justin Trudeau, who said now that all nine of the provinces taking part have agreed to the enhancement, legislation would be introduced in the House of Commons "shortly."

Initially, every province except Québec backed a tentative deal to expand CPP and they agreed to finalize it by July 15.

But BC was the lone signatory that declined to ratify the agreement-in-principle by the deadline, saying it needed more time to consult businesses and individuals. Read *The Vancouver Sun* [article](#).

### Human Rights Tribunal Jurisdiction Requires Employment Relationship | The HR Space

The BC Court of Appeal recently ruled that the BC Human Rights Tribunal could not take jurisdiction over a discrimination complaint where the alleged harasser was employed by a different employer operating at the same work location as the complainant. The appeal court found that the alleged harasser was not in a position of control over the complainant. Therefore the Tribunal had no jurisdiction to proceed with the complaint.

A leave to Appeal application to the Supreme Court of Canada has been filed.

#### The Facts

In [Schrenk v. British Columbia \(Human Rights Tribunal\)](#) (PDF) the BC Human Rights Tribunal originally ruled that it did have jurisdiction to hear the discrimination complaint. The BC Supreme Court upheld that decision. It was then overturned by the BC Court of Appeal.

The human rights complaint was brought by a civil engineer who worked with a work site foreman employed by a different company. The complaint was originally made against the site foreman and the owner of the road improvement project. The complaint was dismissed as against the owner, but proceeded as against the site foreman. It was alleged he made derogatory statements on the basis of the complainant's place of birth, religion and sexual orientation.

Read the [full article](#) by [Lorene A. Novakowski](#) of Fasken Martineau LLP.

### The Blurring Line: Off-Duty Conduct, Employer's Sanctions, and the Place of Remorse in the Workplace

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

As technology continues to advance and become an inescapable part of our daily life, the line between our work and personal lives is becoming increasingly blurred. This paper by Melanie Samuels, Veronica S.C. Rossos, and Kelly Ann Maw, (Articled Student) explores these blurred lines and the new challenges arising for employees, employers, the courts and tribunals. Click [here](#) to view a pdf version of the paper.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 37 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Employment and Assistance Regulation (263/2002)	Sept. 1/16	by <a href="#">Reg 175/2016</a>
	Oct. 1/16	by <a href="#">Reg 233/2016</a>
Employment and Assistance for Persons with Disabilities Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 38 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
		by 2014 Bill 17, c. 14, section 136 only (in force by <a href="#">Reg 165/2016</a> ), <a href="#">Miscellaneous Statutes Amendment Act, 2014</a>
		by 2015 Bill 3, c. 8, sections 1 and 2 only (in force by <a href="#">Reg 165/2016</a> ), <a href="#">Employment and Assistance for Persons with Disabilities Act</a>

Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/16	by <a href="#">Regs 165/2016</a> and <a href="#">175/2016</a>
	Oct. 1/16	by <a href="#">Reg 233/2016</a>
Employment Standards Regulation (396/95)	Sept. 15/16	by <a href="#">Reg 136/2016</a>
	Oct. 1/16	by <a href="#">Reg 189/2016</a>
Labour Relations Code	Sept. 1/16	by 2016 Bill 5, c. 4, sections 19 to 21 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

## LOCAL GOVERNMENT

### Local Government News:

#### BC Municipalities Seek to Keep Tabs on Dangerous Dogs

BC's dangerous dogs could find it harder to shake their bad reputation – or hide out in another town – if the province supports a bid for a dangerous-dog registry.

Municipalities agreed Thursday [September 29<sup>th</sup>] to support a proposal by Pitt Meadows to press the BC government for a provincewide dangerous-dog registry, which would allow officials to identify and track aggressive canines that have been involved in killing or seriously injuring a person or pet, no matter where they live or visit across the province.

The move follows several serious and fatal attacks in Pitt Meadows, including the death of Tucker, a Yorkie, who was killed by another dog in 2014, and Buttons, a Shih Tzu working as a therapy dog, said Coun. Janis Elkerton. Her city, as well as others in Metro Vancouver, have also experienced a rash of attacks this year. Read *The Vancouver Sun* [article](#).

#### New Building Act Regulations Shed Further Light on Legislative Scheme

This past June, the provincial government enacted the [Building Act General Regulation](#), B.C. Reg. 131/2016 (the "Building Act Regulation"), providing some clarity with respect to two important elements of the new [Building Act](#), S.B.C. 2015, c.2 (the "Building Act").

One of the elements addressed by the Building Act Regulation is the definition of "unrestricted matters" for purposes of [section 5](#) of the *Building Act*. This definition is of critical importance to local governments, because under the new legislative scheme, the presumption is that local governments have no authority to regulate building standards where they are the subject of the BC Building Code, or any other provincial enactment.

Section 5 of the *Building Act* provides that where a "local building requirement" relates to a matter dealt with under provincial regulations, it is of "no effect". Note that there is no need for an actual conflict between the local and provincial regulation. It is enough that the local requirement "relates to" a matter regulated by the province. Read the [full article](#) by [Michael Hargraves](#) of Stewart McDannold Stuart.

#### Newsletter Volume 27, Number 3 – UBCM Conference Issue

The law firm [Young Anderson Barristers & Solicitors](#) published a special UBCM Conference article. The article includes the following topics

- *The Building Act: Unrestricted Matters Revealed* – Bill Buholzer
- *Assessor of Area #01 – Capital et al v. Nav Canada – Sukh Manhas Medical Marijuana Use and Accommodation* – Carolyn MacEachern
- *MMAR + MMPR = ACMPR* – Michael Moll
- *Raising the FOI Compliance Bar for Local Governments* – David Loukidelis QC
- *Local Governments with Statutory Rights of Way over Contaminated Sites Protected under Environmental*

*Management Act* – Rosie Jacobs

- *Province Approves City of Vancouver Vacancy Tax* – Jay Lancaster
- *Yanke v. Salmon Arm: The Province Responds* – Bill Buholzer
- *BC Adopts Human Rights Protections for Gender Identity and Expression* – Elizabeth Anderson
- *Severability: who decides?* – Guy Patterson

Download [PDF](#): Newsletter Volume 27, Number 3 – UBCM Conference Issue.

### **Vancouver Proposes Licensed Short-term Airbnb Stays to Increase Rental Supply**

The City of Vancouver announced Wednesday [September 28<sup>th</sup>] it is working to establish regulations that would wipe out half of the city's short-term rental listings while allowing specially-licensed residents to legally operate such units in their principal residences.

Mayor Gregor Robertson said city staff are proposing a new business licence that would permit the operation of short-term rentals in principal residences, whether they are owned or rented.

If council adopts the proposed regulations, Vancouver residents will be able to list all or part of their principal residences – residential properties occupied by the owner or their family at some time during the year – on short-term rental websites like Airbnb for stays of less than 30 days.

To obtain the new licence, owner-operators would need to prove they control the proposed home through a copy of title or tax assessment while those who rent would need to present a signed tenancy agreement showing short-term sublets are allowed. Read *The Province* [article](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Gaming Control Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 22 to 27 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Independent School Regulation (262/89)	Sept. 20/16	by <a href="#">Reg 221/2016</a>
Liquor Distribution Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 35 and 36 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Local Government Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 1 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

## **MISCELLANEOUS**

### **Miscellaneous News:**

#### **Proposed Changes to [Federal] Privacy Act – CBA Recommendations**

On September 27<sup>th</sup>, Gary Dickson appeared on behalf of the CBA in front of the standing committee on Access to information, privacy and ethics that is reviewing the Federal [Privacy Act](#). Specifically, the Committee is looking at 16 recommendations made by the Privacy Commissioner, and called for input from organizations and individuals across Canada. In the video, Dickson describes the need for changes in the *Privacy Act* and what CBA's recommendations are. You can read CBA's comments on the recommendations from the Privacy Commissioner for amendments to the *Privacy Act* [here](#). Source: [CBA National](#).

#### **SCC Upholds CITT Ruling in Customs Case**

In the first customs case to be heard by the Supreme Court of Canada in four decades, the high court has

allowed the appeal of the Attorney General of Canada in a decision of the Federal Court of Appeal overturning a decision of the Canadian International Trade Tribunal.

"This was the first time the SCC had considered a customs classification case in almost 40 years," says Jan Brongers, lead counsel for the appellant, "and the first time it had had a chance to look at customs classification law" since Canada signed on to the International Convention on the Harmonized Commodity Description and Coding System in 1988.

The respondent in the [case](#), Igloo Vikski Inc., imported hockey gloves. Igloo Vikski Inc. later requested refunds of duties paid, claiming the goods should be reclassified. The Canada Border Services Agency classified five models of sports gloves, designed for ice hockey goaltenders, as "gloves, mittens and mitts" under tariff item No. 62.16 of the Convention, rejecting the respondent's position that they be classified under tariff item No. 39.26 of the Customs Tariff as "articles of plastic." The CITT dismissed the appeal by Igloo Vikski, but the Federal Court of Appeal allowed it and referred the matter back for adjudication. Read the [full article](#) by [Elizabeth Raymer](#) and published in the *Canadian Lawyer Magazine*, *Legal Feeds* blog.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Criminal Code Victim Surcharge Regulation (394/99)	Sept. 20/16	by <a href="#">Reg 226/2016</a>
Election Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 22 to 27 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Fees and Student Tuition Protection Fund Regulation (140/2016)	<b>NEW</b> Sept. 1/16	see <a href="#">Reg 140/2016</a>
Freedom of Information and Protection of Privacy Act	Sept. 1/16	by 2015 Bill 7, c. 5, section 85 only (in force by <a href="#">Reg 140/2016</a> ), <a href="#">Private Training Act</a>
Private Career Training Institutions Act	<b>REPEALED</b> Sept. 1/16	by 2015 Bill 7, c. 5, section 82 only (in force by <a href="#">Reg 140/2016</a> ), <a href="#">Private Training Act</a>
Private Career Training Institutions Regulation (466/2004)	<b>REPEALED</b> Sept. 1/16	by 2015 Bill 7, c. 5, section 82 only (in force by <a href="#">Reg 140/2016</a> ), <a href="#">Private Training Act</a>
Private Training Act	<b>NEW</b> Sept. 1/16	c. 5 [SBC 2015], <a href="#">Bill 7</a> , whole Act in force by <a href="#">Reg 140/2016</a>
Private Training Regulation (153/2016)	<b>NEW</b> Sept. 1/16	see <a href="#">Reg 153/2016</a> (as amended by <a href="#">Reg 216/2016</a> )
Private Training Transitional Regulation (141/2016)	<b>NEW</b> Sept. 1/16	see <a href="#">Reg 141/2016</a>
Recall and Initiative Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 28 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

## **MOTOR VEHICLE & TRAFFIC**

### **Motor Vehicle and Traffic News:**

**"One of Those Rare Instances in Which the Left-Turning Servient Driver is not at Fault"**

There is a mistaken belief by some that when a collision occurs at an intersection between a left turning motorist and a vehicle proceeding straight through the intersection that fault will rest with the turning vehicle. This is often, but not always, the case.

Reasons for judgement were released today by the BC Supreme Court, New Westminster Registry, finding a left turning vehicle faultless for such a crash due to excessive Defendant speed. In today's case ([Theiss v. Shorter](#)) the Plaintiff was attempting a left hand turn on an amber light when she miscalculated the on-coming Defendant's speed and a collision occurred. The Defendant was travelling at approximately double the posted speed limit and due to this the Court concluded fault should rest entirely with him. In reaching this conclusion Madam Justice Baker provided the following reasons:

[45] I found the opinions in Mr. Dinn's report, reinforced by his response to rigorous cross-examination and some questions from the Court, to be logical, reasonable and persuasive, and the assumptions on which he based his opinions to be supported by the evidence. I conclude that Mr. Shorter was travelling at an excessive rate of speed as he approached the intersection – probably a speed in excess of 100 kph and possibly as great as 110 kph – more than twice the posted speed limit.

Read the [full article](#) by Erik Magraken of MacIsaac & Company and published on his blog *BC Injury Law*.

Act or Regulation Affected	Effective Date	Amendment Information
Off-Road Vehicle Regulation (193/2015)	Sept. 1/15	by <a href="#">Reg 50/2016</a>
Motor Vehicle Act	Sept. 1/16	by 2015 Bill 14, c. 11, section 17 only (in force by <a href="#">Reg 149/2016</a> ), <a href="#">Tobacco Control Amendment Act, 2015</a>
Motor Vehicle Act Regulations (26/58)	Sept. 6/16	by <a href="#">Reg 212/2016</a>
	Sept. 29/16	by <a href="#">Reg 234/2016</a>
Violation Ticket Administration and Fines Regulation (89/97)	Sept. 1/16	by <a href="#">Reg 149/2016</a>

**PROPERTY & REAL ESTATE**

**Property and Real Estate News:**

**Tenants Facing "Renoviction" Went Up Against a Powerful Vancouver Developer and Lost**

For the Wall Financial Corporation, one of Vancouver's largest and most politically-connected real estate companies, it was simply good business.

"The renovated units at the Ambleside property are re-rented once complete and are achieving on average 24 per cent higher re-rental rates," reads the public company's annual report to shareholders for 2016. "At the Seafair property, one of the two buildings has completed upgrades to all 39 units and a major overhaul of the plumbing system; all of these units have now been re-rented at an average increase of \$500 per month."

But for the tenants of the Alderwood Apartments in Vancouver's Mount Pleasant neighbourhood, the experience of being evicted from their homes of many years was stressful and frustrating. Although many of them attempted to fight to stay in their home and some initially won the right to do so, they say they were ultimately unsuccessful. They feel they were pushed out to make way for tenants who could afford to pay much higher rents. Read the Metronews [article](#).



### Real Estate Developers Not Responsible for Market Declines, B.C. Court Rules

Remember when Vancouver real estate went down? In the late 1990s, the value of 89 units in Vancouver's Westin Grand Hotel collectively decreased in value from C\$18-million to C\$10-million in two and a half years. Investors in the units then discovered that the developers' disclosure statement had materially misrepresented occupancy projections, and brought a class action against the developers. Yet, in its September 15, 2016, decision, [The Owners, Strata Plan LMS 3851 v. Homer Street Development Limited Partnership](#), the B.C. Court of Appeal dismissed the investors' claim, because their loss had resulted from a general market decline, not the misrepresentation. The moral? Real estate developers are not responsible for market forces that impact unit values.

#### Background

The [Real Estate Act](#) (Act), predecessor to the current [Real Estate Development Marketing Act](#), required that developers marketing pre-sale units provide disclosure statements setting out the project's financial details. The Act provided that buyers were deemed to rely on the disclosure statement. Most importantly, the Act provided that if the disclosure statement contained a material misstatement, the developer would be liable to buyers for any loss or damage sustained.

Read the [full article](#) by Roy Millen & Rosalie Clark of Blake Cassels & Graydon LLP.

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To obtain the new licence, owner-operators would need to prove they control the proposed home through a copy of title or tax assessment while those who rent would need to present a signed tenancy agreement showing short-term sublets are allowed. Read [The Province article](#).

### Landlords "Gaming the System" with Fixed-term Leases Could Face Crackdown

*Critics have complained some landlords are using fixed-term leases to skirt laws on rent increases*  
BC's housing minister says he's looking at new legislation to stop landlords from "gaming the system" with fixed-term leases.

"I don't like this flipping over of leases just for the purpose of raising the rent on people, said Housing Minister Rich Coleman this week. "There appears to be a gaming of the system, and we want to stop this," he said.

Fixed-term tenancies allow both tenants and landlords to set a specific length of time for a lease, after which the lease ends, and the tenant must either move out or negotiate a new lease.

[But rental advocates and the NDP have argued](#) some landlords are using them as a loophole to skirt the law restricting rent increases to limits fixed annually by the province. Read the [CBC News article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Form of Evidence Regulation (316/2007)	Sept. 1/16	by <a href="#">Reg 69/2016</a>
Interest Rate Regulation (235/2016)	<b>NEW</b> Sept. 30/16	see <a href="#">Reg 235/2016</a>

Land Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 9 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Land Title Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 10 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>
Long Lake Exemption (232/2016)	<b>NEW</b> Sept. 21/16	see <a href="#">Reg 232/2016</a>
Manufactured Home Park Tenancy Regulation (481/2003)	Sept. 1/16	by <a href="#">Reg 50/2016</a>
Real Estate Services Act	Sept. 30/16	by 2016 Bill 28, c. 27, sections 18 to 42 (in force by <a href="#">Reg 217/2016</a> ), <a href="#">Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016</a>
Real Estate Services Regulation (506/2014)	Sept. 30/16	by <a href="#">Reg 217/2016</a>

## WILLS & ESTATES

### Wills and Estates News:

#### ***Erlichman v. Erlichman Estate*, 2002 BCCA 160**

The testator left behind an estate worth over \$2 million and his will detailed it be divided into two shares, one to his son absolutely and the income of the other to his wife for life, then to be divided among her son's living children upon her death. The wife brought an application to vary the will as she felt the will failed to adequately address the legal obligations to her. The couple had been married for 53 years and their finances had been intimately entwined. The Court of Appeal overturned the Trial Judge's decision and ordered variation of the will.

The testator and his wife married in 1945 after both had lost spouse and each had been left with one son. The couple were married for some 54 years and their finances were so entwined that the claimant did not have a bank account until less than a year before her death.

During his life, the testator and his son built up a construction company and in 1988 he executed a will under which equal shares of his estate were to pass to his wife and his son. Just before his death, the testator executed a new will with the detail that his son would inherit one half absolutely, and his wife would receive the income of the other half for her life, which was then to be divided among her son's children upon her death. Read the [full article](#) by the Wills Variation Group of MacIsaac & Company.

#### **Ministry of Justice Seeking Comments on the Presumption of Advancement and Property Division Under the *Family Law Act***

– by Stan Rule

The British Columbia Ministry of Justice has published a [Discussion Paper: The Presumption of Advancement and Property division under the Family Law Act](#), and is seeking comments until September 30, 2016.

The issues relate to the question of whether the presumption that when a married spouse transfers property to the other spouse the spouse making the transfer intends to make a gift should apply to make property that would otherwise have been excluded from the property that is divided on a marriage breakdown included property. I wrote about the decision in *V.J.F. v S.K.W.*, [2016 BCCA 186](#) in my post "[What Happens to Funds Inherited by a Spouse on the Breakdown of the Marriage](#)." In the V.J.F. case, the husband had inherited \$2 million which he used to purchase real estate in his wife's name. The trial judge had found that the husband had failed to rebut the presumption of advancement and that the real property was a gift to the wife. The court divided the land equally between the spouses. Had the husband bought the land using the inherited funds in his own name, the land would have been excluded from the division of property because it was an inheritance. Read

the [full article](#) by [Stan Rule](#) of Sabey Rule LLP and published on his blog *Rule of Law*.

**Wealth Matters: *Becker v. Becker*:  
Testamentary Capacity**

In [Becker v. Becker](#), the Supreme Court of British Columbia considered whether a testator who had been hospitalized with an inoperable brain tumour had the requisite testamentary capacity to execute new Wills and whether suspicious circumstances were present that rebutted any presumption of capacity.

The test for testamentary capacity, set out in the leading English case *Banks v. Goodfellow* (1870), provides that the testator must (i) understand the nature and effect of the Will; (ii) understand the extent of his property; (iii) understand and appreciate the claims of those around him to which he ought to give effect; and (iv) be of sound mind.

Suspicious circumstances can rebut the presumption of capacity, as set out in the Supreme Court of Canada case [Vout v. Hay](#). Testamentary capacity must then be proved on a balance of probabilities.

**Background**

Ann Andrews died on February 10, 2012 at the age of 73 after having been hospitalized with an inoperable brain tumour. While in hospital, she made a new Will and then replaced it with another Will five days later (the "new Wills").

Ms. Andrews' godchildren, who live in England and Spain (the "Godchildren"), challenged the validity of the new Wills. The grandchildren of Hendrik Becker ("Hendrik"), Ms. Andrews' common-law spouse of 27 years (the "Becker Grandchildren"), argued Ms. Andrews' new Wills are valid.

Read the [full article](#) by Rahul Sharma and Victoria L. Hockley of Miller Thomson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Wills, Estates and Succession Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 30 only (in force by <a href="#">Reg 191/2016</a> ), <a href="#">Miscellaneous Statutes (Signed Statements) Amendment Act, 2016</a>

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