

Quickscribe Reporter

Vol: XVI – Issue: VIII – August 2017

QUICKSCRIBE NEWS:

House Resumes

On September 8th the House will return to prorogue the 1st session and convene the 2nd session of the 41st Parliament. It is expected that the newly formed government will introduce a number of bills that will ban corporate and union donations, make elections mandatory every four years on a fixed date in the fall and hold a referendum on proportional representation. For your convenience, we have updated the new [Parliamentary calendar](#) which is accessible via the left navigation when you login to Quickscribe.

Latest Annotations

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

- [Katherine Hardie](#), British Columbia Human Rights Tribunal – [Human Rights Code](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Veterinarians 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

| | |
|--|---|
| COMPANY & FINANCE | LOCAL GOVERNMENT |
| ENERGY & MINES | MISCELLANEOUS |
| FAMILY & CHILDREN | MOTOR VEHICLE & TRAFFIC |
| FOREST & ENVIRONMENT | PROPERTY & REAL ESTATE |
| HEALTH | WILLS & ESTATES |
| LABOUR & EMPLOYMENT | |

COMPANY & FINANCE

Company and Finance News:

Requisitioned Meeting Breaks Deadlock

A deadlocked board of directors, talk of a "public flogging", and a court reluctant to intervene. The case of [Goldstein v. McGrath](#) is a colourful recent example of a requisitioned public company shareholders' meeting, with the twist that the requisitioning shareholders were represented by or aligned with three of the company's six

directors.

The decision provides three helpful reminders for boards, shareholders and their advisors:

1. The right of shareholders to requisition a meeting can be a powerful tool, especially in the context of junior public companies.
2. Courts are generally reluctant to exercise their authority to call shareholders' meetings.
3. A court will need strong evidence that an incumbent chair may engage in impropriety before appointing an independent chair for a shareholders' meeting.

The six directors of Photon Control Inc., a TSX Venture Exchange listed technology company (Photon), were deadlocked on a number of matters. A group of shareholders who represented more than five percent of Photon's shares (the requisitionists) exercised their right to requisition (i.e. demand) a shareholders' meeting under the British Columbia [Business Corporations Act](#) (the BCBCA). Read the [full article](#) by Gary Sollis, Ray Power and Daniel McElroy with Dentons, published on the CBA British Columbia site.

Chapter 19 May Be a NAFTA Deal Breaker for Canada, but Can It Survive a Legal Challenge in the U.S.?

A lot of Canadian softwood lumber exporters will tell you Chapter 19 is an instrumental part of the North American Free Trade Agreement.

Softwood lumber is the longest and bitterest of Canada-U.S. trade disputes. Small wonder then that Prime Minister Justin Trudeau has cautioned that removing Chapter 19 from the trade pact would be a deal breaker in the upcoming renewal talks between Canada, the United States and Mexico.

Chapter 19 is a mechanism NAFTA members can use to review the fairness of anti-dumping and countervailing duties. The U.S. has a long history of slapping such duties on Canadian softwood lumber shipments, and Canada has taken advantage of Chapter 19 to reverse those actions.

A Chapter 19 panel decides each case according to the domestic laws of the country that imposed the duties. So a Chapter 19 panel does not override a country's domestic laws, but serves as a check on how each country is applying its own rules. Read the *Financial Post* [article](#) by Drew Hasselback.

Canadian Securities Regulators Take Position on Cryptocurrencies

The Canadian Securities Administrators (CSA), a body comprised of the securities regulators from Canada's ten provinces and three territories, has finally taken a position on cryptocurrency. On August 24, 2017, it published CSA Staff Notice 46-307 *Cryptocurrency Offerings* (the "Notice"). The Notice provides the most extensive policy outline yet from the CSA on how current securities law requirements may apply to initial coin offerings (ICOs), initial token offerings (ITOs), cryptocurrency investment funds, and cryptocurrency exchanges.

The Notice follows two other pronouncements from securities regulatory bodies earlier this year: a press release dated March 8, 2017 from the Ontario Securities Commission which advised businesses that the use of distributed ledger technologies, such as blockchain, as part of their financial products or service offerings, may make them subject to Ontario securities laws; and an investigative report in the United States by the Securities and Exchange Commission issued on July 25, 2017 which concluded that in one case, tokens offered in an ITO were securities and subject to the applicable federal securities laws of the United States. Read the [full article](#) by [Max Portner](#) of Clark Wilson LLP.

BC Securities – Policies & Instruments

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

- [51-351](#) – CSA Staff Notice 51-351 *Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2017*
- [24-316](#) – CSA Staff Notice 24-316 *Feedback on CSA Consultation Paper 24-402 Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment*
- [94-302](#) – CSA Staff Notice 94-302 - *Delivery of Forms Required under National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- [46-307](#) – CSA Staff Notice 46-307 *Cryptocurrency Offerings*

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

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

| | | |
|--|------------|--------------------------------|
| National Instrument 41-101 <i>General Prospectus Requirements</i> (59/2008) | Sept. 1/17 | by Reg 85/2017 |
| National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (1/2000) | Sept. 1/17 | by Reg 85/2017 |
| National Instrument 81-102 <i>Investment Funds</i> (2/2000) | Sept. 1/17 | by Reg 85/2017 |

ENERGY & MINES

Energy and Mines News:

Federal or Provincial Regulation? One of the Many Challenges Facing Energy Projects

Background

From the small town of Smithers, British Columbia, Michael Sawyer applied to the National Energy Board (the "NEB") requesting it to determine and issue a declaratory order that the Prince Rupert Gas Transmission Project (the "Project") was properly within federal jurisdiction, and therefore subject to regulation by the NEB. The NEB found that Sawyer failed to demonstrate on a prima facie basis that the Project was a federal work or undertaking and therefore not subject to NEB jurisdiction. Sawyer applied for judicial review of the NEB's decision and the Federal Court of Appeal unanimously granted Sawyer's appeal, remitting Sawyer's original application back to the NEB for redetermination.

The judgment of *Sawyer v Transcanada Pipeline Limited*, 2017 FCA 159, 2017 CarswellNat 3405 [*Sawyer v Transcanada*] is interesting for a number of reasons:

1. the facts demonstrate how significantly an individual may affect regulatory processes;
2. the facts demonstrate the difficulties facing energy projects that are potentially subject to both provincial and federal regulation; and
3. it provides a useful overview of how a court will likely consider, and how a regulatory tribunal should consider, whether or not a project is a federal work or undertaking.

The NEB's Decision

Standing

Sawyer's application was preliminary. [Subsection 12\(1\)](#) of the [National Energy Board Act](#), RSC 1985, c N-7 (the "Act") grants the NEB full and exclusive jurisdiction to determine whether an inquiry is required to determine if the NEB has jurisdiction over a given project.

Read the [full article](#) by [Miles Pittman](#) and [Michael Gaber](#) with Borden Ladner Gervais LLP.

Kinder Morgan Reaches Milestone on Westridge Terminal Approval, but Hurdles Remain

As Kinder Morgan begins to meet federal regulatory conditions on its \$7.4-billion Trans Mountain Pipeline expansion, the company is slowly putting itself in a position to begin construction on some elements of the controversial mega-project.

In a letter posted on its website Wednesday [August 30], the National Energy Board said 49 conditions needed to begin construction on the Westridge Marine Terminal expansion in Burnaby have been satisfied.

However, the company will also need other permits to start construction, even where it has met NEB conditions, including from the Vancouver Fraser Port Authority for the Westridge expansion.

A project application submitted by Kinder Morgan to the port authority in June of this year is under review. When a decision will be made and a permit issued is unclear.

And there are other hurdles that could create delays for the project, meant to provide a major Canadian access point to new markets for Alberta oil in energy-hungry Asia. In BC, the new NDP government has said it will not

issue permits until the company's plans meet a test of First Nations consultation. Read [The Vancouver Sun article](#).

Foundational Policies Can Lead to Bright Future for Canada's Mineral and Mining Industry

As Canada's Energy and Mines Ministers convene for their 74th annual conference, a national coalition of mining associations is recommending several government actions to help unlock billions of economic activity across the country, address climate change, bolster reconciliation efforts with Indigenous peoples, and secure Canada as the world's top supplier of sustainably-sourced minerals and metals in an increasingly lower carbon global economy.

A brief submitted by the Canadian Mineral Industry Federation (CMIF) details six policy areas where provincial collaboration and action by governments can enhance Canada's ability to attract new mineral investment and expand the mineral and mining industry's vast socio-economic contributions to Canadians:

1. **Improve the regulatory process:** Given the importance of the regulatory regime to the mining industry's competitiveness and Canada's ability to compete against other countries for new mineral investment, it is critical that current reviews of the [Canadian Environmental Assessment Act](#), the [Fisheries Act](#), and the [Navigation Protection Act](#) result in an effective, timely and coordinated regulatory process, from pre-environmental assessment (EA) to post-EA permitting, with meaningful consultation.

Read the [full press release](#) on the Mining Association of Canada website.

Making a Constitutional Case Out of Constructing Pipelines

The latest obstacle to the establishment of a Canadian LNG industry

In recent years, one of the most significant challenges faced by major pipeline projects has been the constitutional question of whether governments have satisfied their duty to consult Aboriginal groups as required by [section 35](#) of the [Constitution Act, 1982](#). A judicial determination of inadequate consultation can result in courts overturning government approvals permitting pipeline construction. However, a finding of inadequate consultation need not be fatal to projects, assuming the responsible government involved is prepared to remedy its consultation errors in a timely manner. Remediating these types of constitutional errors does not necessarily undermine or negate the years of work that go into the regulatory permitting process.

The opposite is true of constitutional cases based on arguments that pipeline proponents have applied to or received approvals from the wrong regulator. If a major pipeline is found by a court to have been approved by the wrong regulator before it is constructed, the years of work associated with obtaining approval can potentially be negated and the pipeline proponent may need to start over with the regulator determined to have jurisdiction. Read the [full article](#) by [Bernie \(Bernard\) J. Roth](#) and [Laura K. Estep](#) of Dentons.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|-----------------------|---|
| Petroleum and Natural Gas Act | Aug. 1/17 | by 2014 Bill 12, c. 10, section 30 (a) only (in force by Reg 198/2016), Natural Gas Development Statutes Amendment Act, 2014 |
| Petroleum and Natural Gas General Regulation (357/98) | Aug. 1/17 | by Reg 198/2016 |

FAMILY & CHILDREN

Family and Children News:

Appeal Court Dismisses BC Mom's Lawsuit Alleging Kids in Ministry Care Were Molested

The B.C. Court Of Appeal has dismissed a civil claim against the province's Children's Ministry that accused officials of allowing a toddler in its care to be molested by their father.

The panel of judges ruled the father was initially given an unfair family court trial and has ordered a new trial. The civil claim, filed by the child's mother in 2012, argued the ministry had been negligent and acted in bad faith

when it allowed [unsupervised visits](#) with the father.

Thursday's [August 31] appeal court decision stems from two parallel cases involving the woman, who can only be named as JP: one was a family court case, while the other was heard in B.C. Supreme Court.

In 2012, the mother was awarded sole custody of her four children after a family court judge ruled they were physically and sexually abused by their father. The father, who also cannot be identified, has never been criminally charged.

In 2015, Supreme Court Justice Paul Walker issued a [scathing 341-page ruling](#) that found the ministry breached its fiduciary duty to the family. Read the [CBC article](#).

The Joint Expert Regime in Family Law & Related Issues

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

In this paper, Paul R. Albi, QC, and Stephanie Ovens, Articled Student, of DLA Piper (Canada) LLP discuss the law and some practical considerations surrounding the engagement of financial experts in family law in British Columbia. Click [here](#) to view a pdf version of the paper.

Q&A: Conroy in Hot Seat Taking on Challenging Child-welfare Ministry

Katrine Conroy is a mother, a rancher and a former early childhood educator who now takes on one of the most-challenging jobs in government – the minister responsible for BC's most-vulnerable children.

After two terms in opposition, the Kootenay West NDP MLA is now in charge of the much-maligned Ministry of Children and Family Development (MCFD).

Critics argue the ministry, under the former Liberal government, was starved for cash, leading to an over-presentation of Indigenous children in the system, a shortage of social workers and a dearth of services for marginalized youth. In recent years the ministry was rocked by the high-profile deaths of several youth, right before or after they aged out of care at 19.

The ministry also had a fractious relationship with the representative for children and youth, an independent advocate who makes recommendations for improvements to the child-welfare system. Read the [Vancouver Sun article](#).

Rules in the Works for Surrogacy and Donor Expenses

Last month, the federal government announced it's bringing in regulations setting out what expenses surrogate mothers (and individuals who donate eggs or sperm) can be reimbursed for.

This is big news. Since the [Assisted Human Reproduction Act](#) came on the scene over 10 years ago Canadians using surrogacy to build their families have struggled to figure out what were legally acceptable expenses.

At first blush, it sounds simple – identifying expenses seems a relatively straight-forward and practical issue compared to the many life-altering questions intended parents and surrogates have to think through. But due to a major gap in our federal law, no one has been entirely sure what properly qualifies as an acceptable expense. And getting it wrong is potentially a criminal offense.

Under the Act, it is illegal to pay for surrogacy services or for someone to arrange surrogacy services. If convicted, an offender can face up to 10 years in prison. Reimbursing a surrogate for appropriate expenses, however, appears to be legally acceptable. Read the [full article](#) by Linda Cassels on the Fertility Law BC website.

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

FOREST & ENVIRONMENT

Forest and Environment News:

Navigating the Political and Regulatory Constraints Associated with Urban Riparian Forests

Trees are vital to our cities' character and for the well-being of its residents. In order to manage them, we are required to understand and comply with a wide range of policies that regulate trees and the environment. Understanding how trees are managed under municipal bylaws as well as their role within provincial environmental legislation can be complicated. One of the more challenging tasks is to navigate the political and regulatory constraints associated with forests growing next to streams that run through our urban areas. The provincial [Riparian Areas Protection Act](#) and associated [Riparian Areas Regulation](#) (RAR) protect riparian areas from development by establishing a streamside protection and enhancement area (SPEA). A local government can allow development activities to proceed near streams if a qualified environmental professional provides their opinion that the SPEA is protected from the development, and that measures have been taken to protect the integrity of the SPEA. Where a forested edge is created along a watercourse, the developer is responsible for ensuring that the trees within the SPEA are protected. Read the [full article](#) by Mike Coulthard, RPF, RPBio, Diamond Head Consulting published in the September-October edition of *BC Forest Professional*.

The U.S. Argument in Lumber Talks Is, Yet Again, Based on Faulty Calculations

In the runup to NAFTA negotiations starting on Aug. 16, Foreign Affairs Minister Chrystia Freeland has been pushing to close a softwood lumber deal in order to clear the decks. But with heavy U.S. penalties on Canadian lumber imports already in place, the BC and Canadian lumber industries are clearly sitting in a very weak bargaining position. For now, the U.S. side holds all the aces. But they are blackmail cards, based on extremely flawed subsidy calculations by the U.S. Department of Commerce.

This now marks the third time in a row since 1996 that the United States has attempted to use erroneously calculated duties to pressure Canada into accepting a punitive long-term trade agreement. However, caving in early to another blackmail lumber agreement in 2017 would be like snatching defeat from the jaws of victory.

Here is why. On April 25, Commerce opened its fifth countervailing duty case against Canadian softwood lumber imports in 35 years. The department assessed three representative BC Interior companies with an average 9.4-per-cent penalty for allegedly "subsidized stumpage." When alleged BC log export restrictions and government grants were factored in, the total subsidy penalty for the rest of the Canadian industry rose to an average of 20 per cent.

Stumpage is the value of a tree while it is still standing on the stump, excluding harvesting and hauling costs to the sawmill. For more than three decades, the U.S. Coalition for Fair Lumber Imports has alleged that the Canadian lumber industry enjoys an unfair cost advantage, mainly because provincial governments are said to provide subsidized timber from public lands. Read *The Globe and Mail* [article](#) by Doug Smyth.

NDP Orders Review of Government Reliance on Industry-hired Experts

The NDP government has ordered a review of BC's controversial "professional reliance" system, which uses experts hired by industry to assess the environmental risks associated with logging, mining and other projects.

Environment Minister George Heyman said in an interview that the province previously relied on its own professionals to protect the public interest. But the Liberal government shifted much of that responsibility to professionals hired by project proponents – a change that critics say creates conflicts of interest and undermines public trust.

Heyman said that reviewing the system is a top priority for the NDP government, but he gave no indication of how long it will take or when it will be completed. Read *The Vancouver Sun* [article](#).

BC MP Says Feds Need to Move Faster on Fisheries Legislation

While the federal government is taking public input on potential changes to the [Fisheries Act](#), the NDP fisheries critic says those changes aren't coming soon enough. The government is reviewing [amendments made in 2012 by the then-ruling Conservatives](#) that rolled back fish habitat protections and environmental assessment laws.

During the 2015 federal election, [the Liberal Party campaigned on a promise](#) to "review these changes, restore lost protections and incorporate more modern safeguards."

"Those promises have not been kept. We're two years into a federal Liberal mandate and still, we're under the Harper Fisheries Act," Port Moody-Coquitlam MP Fin Donnelly told *On The Coast* guest host Michelle Eliot. "All processes need time but certainly when there's a promise made by a party that knew full well what changes needed to be made ... it should not take you two years." Read the *CBC* [article](#).

BC Ministry of the Environment: Errata Version 3

Posted for CSR Omnibus Amendment

An [updated Errata](#) (version 3) to the Stage 10 (Omnibus) Amendment to the [Contaminated Sites Regulation](#) has been released. The purpose of the Errata is to compile all currently known errors in the Stage 10 Amendment with the intention to correct all errors in a final 'house-keeping' amendment to be made to the Regulation immediately prior to the new standards coming into force on November 1, 2017. Read the [full post](#) on the British Columbia Environment Industry Association website.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decisions released in the month of August:

[Environmental Management Act](#)

- [Ermes Culos v. Director, Environmental Management Act \(Belcorp Environmental Services Inc.; Village of Cache Creek, Third Parties\)](#) [Final Decision – Appeal Dismissed]

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|----------------|---|
| Grain Industry Development Fund Regulation (236/90) | Aug. 1/17 | by Regs 154/2017 and 155/2017 |
| Hunting Licensing Regulation (8/99) | Sept. 1/17 | by Reg 127/2017 |
| Wildlife Act Commercial Activities Regulation (338/82) | Sept. 1/17 | by Reg 127/2017 |
| Wildlife Act General Regulation (340/82) | Sept. 1/17 | by Reg 127/2017 |

HEALTH

Health News:

Concerns about Integrity of Public Health-care System Prompt Audits in BC

Charging patients extra fees for medically necessary procedures is a violation of Canada's Health Care Act
With the blessing of the federal government, British Columbia is putting three health clinics under the financial microscope amid long-standing concerns about overbilling and the integrity of the country's public health-care system.

Federal Health Minister Jane Philpott said her department reached an agreement with BC to audit the three clinics in hopes of rooting out the practice of extra-billing for medically necessary care, a violation of the [Canada Health Act](#).

"The audit will determine the extent to which extra-billing and user fees have been a barrier to accessible care for people in British Columbia," Philpott said in a statement Thursday [August 10].

Philpott's newly appointed BC counterpart, former NDP leader Adrian Dix, said he strongly supports the audit agreement, which was negotiated under the province's previous Liberal government.

"We have to act to ensure that access to medical care in BC is based on need and not on an individual's ability to pay," Dix said in an interview with *The Canadian Press*. "That is the reason the law exists and that is something that has been fundamental to Canada's health-care system for a long time and is something we strongly support." Read the [CBC News article](#).

Purdue Pharma Agrees to OxyContin Settlement, But Is It Fair?

Purdue Pharma, the manufacturer of OxyContin, a powerful, highly addictive, and widely-prescribed painkiller,

agreed to settle a national class-action lawsuit earlier this year. The settlement, which is the result of a ten-year legal battle waged by product liability lawyers, will pay \$20-million to plaintiffs across Canada, including \$2-million to provincial healthcare providers.

OxyContin, along with other high-powered painkillers, is seen as a contributing factor in the rise of opioid addiction in Canada, and the subsequent surge of overdose deaths. The Public Health Agency of Canada released data in June suggesting nearly 2,500 Canadians died from opioid-related overdoses in 2016.

Addiction and addition-related deaths take an enormous emotional, physical, and financial toll on victims and their family members. The class-action lawsuit was launched in Atlantic Canada in 2007 and eventually grew to include plaintiffs in every province, aims to secure compensation for these damages. Read the [blog post](#) by Will Davidson LLP.

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

There were no amendments this month.

LABOUR & EMPLOYMENT

Labour and Employment News:

Missing Pension Plan Beneficiaries and the Federal Consultation Paper on the Financial Sector Framework

The Bank of Canada currently maintains a program for holding account balances for missing individuals, which are transferred from banks and trust companies in certain circumstances. On August 11, 2017, the federal Department of Finance released a [consultation paper](#) (Consultation Paper) indicating that consideration is being given to modernizing this program. We understand that the federal Department of Finance may be interested in whether there is support for extending the Bank of Canada program to include amounts relating to missing pension plan beneficiaries.

Pension plan administrators have a fiduciary duty to ensure that each member and beneficiary is paid the benefits to which they are entitled. In addition, the [Income Tax Act](#) (Canada) requirement that retirement income from a registered pension plan commence no later than the end of the calendar year in which the recipient reaches age 71 must be honoured. Further, increasing numbers of missing beneficiaries impose a significant administrative burden on plan administrators (particularly in light of new legislative requirements to provide biennial statements to retired and former members), imposes delays on plan wind-ups and exacerbates the risk of pensions being improperly paid (i.e., unwittingly after death of the beneficiary). Read the [full article](#) published by Blake, Cassels & Graydon LLP.

Question and Answer with BC Minister of Labour Harry Bains

BC's new Minister of Labour Harry Bains is no stranger to labour relations. With 15 years as an elected official at Steelworkers-IWA Canada Local 2171, and 12 years an MLA, he's been heavily involved in several high-profile labour relations issues. Now he's in charge of updating employment standards, refreshing the province's employment laws and reviewing the BC [Labour Relations Code](#). He spoke with *Postmedia News* about his portfolio.

Q: Regarding the issue of removing secret ballots for union certification (something Green Leader Andrew Weaver opposes). The premier has said he wants to do it. Are you still proceeding with that?

A: "The idea here is the workers have the right to join a union of their choice without intimidation, encouragement or threats from anybody. If it means that the review (of the BC *Labour Relations Code*) comes back and we need to have a card check system, then we will look at that."

Q: What's the goal of your Fair Wages Commission to get to a \$15 an hour minimum wage?

A: "The Fair Wages Commission was agreed to with our Green partners that will give us a pathway to \$15 an hour. We'll be announcing the full detail of the panel within weeks, not months. My expectation is they'll come back with their first report by the end of the year."

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

BC to Fight Inequality and Discrimination with Renewed Human Rights Commission

British Columbia will re-establish a human rights commission to fight inequality and discrimination in all its forms, Premier John Horgan announced [August 4].

"Every person deserves to be treated with dignity and respect. By re-establishing a human rights commission, we will create a more-inclusive and just society, where we work together to eliminate inequality and prevent discrimination on the basis of race, religion, sexual orientation, gender identity and gender expression," said Premier Horgan.

British Columbia is the only province in Canada without a human rights commission. The previous commission was dismantled in 2002 in favour of a complaint-driven tribunal. Read government [news release](#).

BC Laws Lag Behind Fast-rising Gig Economy

On-demand work requires stronger employer protections, lawyers say

"The gig economy is real," said Rocky Ozaki, vice-president of the BC Tech Association and co-founder of Now! Innovations. "Work in 20 years will not be the same as it is today."

Part of the challenge is defining that new economy's scope, its reach and its implications for economies around the world. Research by software company Intuit Inc. estimates that by 2020 7.6 million Americans will work in the U.S. gig economy. In three years, around 2.3% of the U.S. population will be seeking out temporary, flexible gigs as on-demand workers, independent contractors and consultants. As Canadians follow suit, the Uberization of even a fraction of the BC workforce raises complicated legal questions.

"The bottom line is that the way the employment standards protections are structured currently, they did not have this economic concept in mind," said Geoff Mason, a lawyer at Kent Employment Law.

When the BC [Employment Standards Act](#) was enacted in 1980, companies like Lyft and TaskRabbit weren't even dreamed of. Read the [full article](#) published in *Business in Vancouver*.

BC Workers Vulnerable to Wage Theft, Bullying Says Labour Group

A new report says there's an urgent need to beef up the BC's labour laws and resources. A labour advocacy group is calling for changes to BC's [Employment Standards Act](#), saying the current legislation is failing to protect workers including the province's burgeoning tech sector.

The BC Employment Standards Coalition released a [report](#) today documenting 145 stories of alleged abuse or exploitation in the workplace, with a series of recommendations to improve workers rights and modernize employment standards in the province.

"There's a tremendous barrier to proper enforcement of the act and people getting their rights," said David Fairey, co-chair of the coalition.

The *Employment Standards Act* sets minimum standards for most workplaces, but a number of sectors have been granted exclusion from overtime regulations, including high tech, the service industry and construction.

Fairey said that practice essentially amounts to wage theft, and should end.

"We don't see the need to give exclusions to certain sectors. Everyone should be treated the same in our view," Fairey told Stephen Quinn, guest host of *The Early Edition*. Read the full *CBC News* [article](#).

Increases to BC Minimum Wage

[Proposed amendments](#) to the [Employment Standards Regulation](#), B.C. Reg. 396/95, promise an increase in the minimum wage in British Columbia by 50 cents to \$11.35 per hour. The liquor servers' wage will see an identical rise of 50 cents to \$10.10 per hour. The daily rates for live-in home support workers and live-in camp leaders, as well as the monthly rates for resident caretakers and the farm worker piece rates (for harvesters of certain fruits and vegetables) will receive increases of 4.6 per cent. These changes are set to take effect on September 15, 2017.

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

| | | |
|---|------------|---------------------------------|
| Employment and Assistance Regulation (263/2002) | Sept. 1/17 | by Reg 161/2017 |
| Employment and Assistance for Persons with Disabilities Regulation (265/2002) | Sept. 1/17 | by Reg 161/2017 |
| Occupational Health and Safety Regulation (296/97) | Aug. 1/17 | by Reg 142/2017 |
| Salary Range Regulation (152/2017) | Aug. 11/17 | by Reg 157/2017 |

LOCAL GOVERNMENT

Local Government News:

Province Seeks Input on Proposed Liquor Policy

The Province of British Columbia is seeking input regarding the distribution of profits resulting from Special Event Permits (SEPs) issued by the Liquor Control and Licensing Branch. Local governments are invited to [provide feedback](#) toward the Province's proposed policy by September 15, 2017.

Under the previous regulatory framework, if the holder of a SEP charged over the liquor cost recovery price list, all profits made from the event were required to be transferred to a charitable purpose. As of April 6, 2017 the amended Liquor Control and Licensing Regulation authorizes the General Manager to exempt permit holders from this requirement if they charge over the liquor cost recovery price list. Due to the election period, an exemption policy and criteria have yet to be determined. The General Manager currently considers each exemption request as a unique submission, basing decisions on policy guidelines used in Ontario. Read the UBCM [article](#).

Cannabis Legalization Update

On April 13, 2017, the federal government tabled cannabis legalization and enforcement legislation (Bill C-45 and Bill C-46), with the intention of legalizing cannabis by July 2018. Since that time, UBCM has worked to engage its membership, the provincial government, and other key stakeholders, regarding a cannabis legalization framework and important issues and implications.

The legalization and regulation of cannabis has emerged as a major policy issue for UBCM and its membership, as local governments stand to face widespread impacts. The legislation tabled by Canada has provided greater clarity regarding federal and provincial frameworks that will be developed, and potential areas of responsibility for all orders of government. With the expectation that a 'made in BC' framework will be developed by July 2018, UBCM continues to take action on this file. Read [more](#) on the UBCM website.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

MISCELLANEOUS

Miscellaneous News:

Can What's Reasonable Today be Unreasonable Tomorrow?

Teal Cedar Products Ltd. v. British Columbia

Disputes are often resolved through arbitration. Arbitrators often interpret and apply the law in arriving at a decision. What happens when an arbitrator gets it wrong and how wrong does an arbitrator have to be before the losing party can successfully appeal an arbitrator's decision? This issue was considered in [Teal Cedar Products Ltd. v. British Columbia](#).

The facts are straightforward. British Columbia reduced Teal's cutting rights pursuant to the [Forestry Revitalization Act](#) (FRA). As a result, Teal was entitled to compensation. Teal and BC invoked the FRA arbitration

process to resolve one outstanding issue, the amount of compensation payable to Teal for improvements (i.e., roads and bridges) it had built on Crown land.

The arbitration was heard by a single arbitrator who was presented with different theories on how to determine the value of the improvements. BC argued that the arbitrator should use an income-based approach, which calculates the value based on discounted future cash flow. Teal presented evidence that supported a valuation based on depreciated replacement cost (i.e., the cost of rebuilding what currently exists, less allowances for wear and tear and obsolescence). The arbitrator agreed with Teal, resulting in an award that was significantly more than BC's valuation; \$9,150,000 vs. \$4,000,000. Read the [full article](#) by John Stefaniuk and Melanie Labossiere with Thompson Dorfman Sweatman LLP.

BC Using \$500,000 from Civil Forfeiture Grants to Fund Anti-gang Programming for Youth

Money to eliminate current wait list for Surrey Wraparound program

The government of BC plans to invest \$500,000 from civil forfeiture grants into anti-gang programming for youth in Surrey.

The money will help eliminate the 35-person wait list for Surrey's Wraparound (Wrap) program, which targets youth aged 11 to 17 who are at risk of joining gangs and helps them build positive lifestyles and self-worth by establishing stronger connections with their school, community and home.

There are currently 97 students taking part in the program, which the province says has demonstrated a 67 per cent decline in negative contact with police.

"As part of our commitment to tackle gangs and gun violence and create safer communities for people, we are delivering on our promise to increase support for Surrey Wrap by \$500,000," said Mike Farnworth, minister of public safety and solicitor general.

"People want to feel safe where they live and know their child won't be lost to the dead-end path of gang life," Farnworth said. "It's time to target gang violence in our neighbourhoods head-on." Read the full [CBC News article](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|------------------------------|----------------------------------|
| Committees of the Executive Council Regulation (156/2017) | NEW Aug. 1/17 | see Reg 156/2017 |
| Committees of the Executive Council Regulation (229/2005) | REPEALED Aug. 1/17 | by Reg 156/2017 |
| Minister of State for Child Care Expected Results for the 2017/2018 Fiscal Year Regulation (159/2017) | NEW Aug. 23/17 | see Reg 159/2017 |
| Minister of State for Trade Expected Results for the 2017/2018 Fiscal Year Regulation (160/2017) | NEW Aug. 23/17 | see Reg 160/2017 |

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Court of Appeal Denies Severe Injury Claim Because Teenaged Plaintiff "Ought to Have Known" Vehicle Driven Without Consent

Reasons for judgement were published today by the BC Court of Appeal denying a Plaintiff access to a pool of money intended to compensate people injured at the hands of uninsured motorists. In the recent case ([Schoenhalz v. ICBC](#)) the Plaintiff, who was 17 at the time, was badly injured while riding as a passenger in a vehicle involved in a 2007 collision. The Plaintiff suffered spinal fractures, various burns to her body, dental

injuries and a pelvic fracture. The driver of the vehicle was found to be negligent and damages of \$282,992 were assessed.

The Court found, however, that the driver of the vehicle was not operating it with either the express or implied consent of the owner. Accordingly the lawsuit against the vehicle owner was dismissed. The driver was 15 years of age at the time and did not have a license. The Court concluded that "*at the time of the accident (the Plaintiff) knew that (the driver) was age 15 and did not have a driver's license.*" ICBC denied coverage to the Plaintiff and the current lawsuit was commenced. Read the [full article](#) by [Erik Magraken](#) on the *BC Injury Law and ICBC Claims Blog*.

More Vehicle Crashes, Increased Injury Payouts and Higher Vehicle Repair Costs Contributing to Proposed Rate Hike: ICBC

A greater number of vehicle crashes, increased injury costs and higher vehicle repair costs are all contributing to the increase in proposed insurance rates for drivers in British Columbia, the province's Crown corporation responsible for auto insurance said on Monday [August 14].

Responding to a *Canadian Press* story on Sunday [August 13], Insurance Corporation of British Columbia (ICBC) spokesperson Joanna Linsangan confirmed to *Canadian Underwriter* that there are about 875 vehicles crashes on an average day in BC, with the number of crashes increasing by 23% between 2013 and 2016.

"Based on the 2016 calendar, we spent over \$5 billion on claims and related costs," Linsangan said on Monday. "Over 365 days, that's about \$13 million a day."

Injury costs have also soared about 80% over the last seven years, the *Canadian Press* reported. Linsangan told *Canadian Underwriter* that injury costs in 2009 were \$1.5 billion compared to \$2.7 billion in 2016. Vehicle repair costs have increased 30% from \$1.16 billion in 2014 to \$1.5 billion last year. Read the *Canadian Underwriter* [article](#).

BC Supreme Court Quashes Driving Prohibition when Officer's Issuance of the Prohibition Failed to Meet the Requisite Standard of "Reasonable and Probable Grounds to Believe

Chatchot v. Jordan, [2017] B.C.J. No. 1318, [2017 BCSC 1160](#), British Columbia Supreme Court, July 7, 2017, R.A. Skolrood J. (In Chambers)

On May 7, 2016, the petitioner was pulled over by an RCMP officer (the "Officer") for speeding.

The Officer's notes and report indicated the petitioner was travelling 130 km/hr in a 80 km/hr zone. The petitioner stated he had been travelling on a highway with a speed limit of 110 km/hr, before exiting the highway to an 80 km/hr zone along with other vehicles travelling at the same speed.

The Officer issued the petitioner a 24-hour driving prohibition pursuant to [s. 215\(3\)](#) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, on the basis the Officer had reasonable and probable grounds to believe the petitioner's ability to drive a motor vehicle was affected by a drug, other than alcohol. According to the Officer's notes and report, he based the driving prohibition on the petitioner's speed, dilated pupils, and poor performance on a standard field sobriety test. The Officer's notes and report indicated the traffic stop occurred at 8:32pm and the notice was issued within three minutes, at 8:35pm.

The petitioner applied for judicial review of the driving prohibition. The scheme for review of a driving prohibition under s. 215(3) of the *Motor Vehicle Act* is unusual in that there is no intermediate review to an administrative decision-maker (for example, the Superintendent of Motor Vehicles) and record of proceedings available to the reviewing court. Read the [full article](#) by [Joel A. Morris](#) with Harper Grey LLP.

Federal Justice Minister Seeks to Beef Up Blood/Alcohol Levels for Drivers

The classic romantic date is in danger of disappearing if the federal government reduces the legal alcohol limit for licensed drivers, a spokesman for Quebec's restaurant lobby said Tuesday [August 8]. Francois Meunier said if Ottawa passes such a law, it would be a disaster for the restaurant industry – and for lovers. "The (change would) mean a woman can have one drink and a man, in most cases, two," Meunier said. "Forget about a bottle of wine for two, for a Valentine's Day dinner – that's over." In a letter to provincial and territorial justice ministers dated last May, federal Justice Minister Jody Wilson-Raybould suggested lowering the limit to 50 milligrams of alcohol per 100 millilitres of blood from the current 80 milligrams. The federal minister said the change would "make it easier to fight the danger posed by drivers who have consumed alcohol." Read *The Province* [article](#).

Green Leader Andrew Weaver Pushes to Legalize Uber in BC

BC Green Leader Andrew Weaver says he will re-introduce legislation in the fall to legalize ride-hailing services like Uber and Lyft. Weaver has twice introduced his *Ridesharing Enabling Act* in the BC legislature, once in [April 2016](#) and again in [February 2017](#). His private member's bill calls for all ride-hailing drivers to undergo a background check, pass a vehicle inspection and possess the necessary insurance.

"The government cannot stick its head in the sand when it comes to new technology," Weaver said in a release. "All parties want to see BC be a leader in the emerging economy. To do so, government must take a proactive, responsive approach that considers the wide-ranging impacts of technological innovation. Vancouver is the largest city in North America without ridesharing – it is time we finally made this service accessible to British Columbians." Read *The Vancouver Sun* [article](#) by Scott Brown.

CVSE Bulletins & Notices

The following notices have been posted in July by CVSE:

- [CVSE1000](#) – General Permit Conditions to 4.4 m OAW (August 2017)
- [CVSE1001](#) – Routes Pre-Approved for 5.0 m OAW (August 2017)
- [CVSE1002](#) – Conditions up to 6.0 m OAW in the Peace Region (August 2017)
- [CVSE1003](#) – Conditions for Structures up to 6.1 m OAW in the Peace Region (August 2017)
- [CVSE1013](#) – Restricted Routes for Wide Bunks Hauling Beetle Killed Wood (August 2017)
- [CVSE1014](#) – LCV Operating Conditions and Routes (August 2017)
- [CVSE1052](#) – District Authorizations & Notices for Very Large Loads (August 2017)

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|----------------|---------------------------------|
| Special Direction IC2 to the British Columbia Utilities Commission (307/2004) | Aug. 31/17 | by Reg 165/2017 |

PROPERTY & REAL ESTATE

Property and Real Estate News:

Breaking into British Columbia's Real Estate Market with the Use of a Co-Ownership Agreement

It seems that the goal of owning a piece of property in British Columbia is becoming more and more unattainable each time we read a news story. The headlines emphasize the growing number of barriers that are preventing individuals from investing in the real estate market, including the lack of affordable new housing, competition from foreign investors, changing mortgage requirements, and the soaring average home prices in Vancouver and other areas of the province.

Here we discuss an increasingly popular option that many are relying on to getting around these barriers, which involves making the investment with another person, or as we call it: co-ownership.

Making an investment in real estate with someone else

There are many benefits that come along with co-owning real estate with another person, who may be either a family member, spouse, friend, or another individual that you trust and have a relationship with.

Read the [full article](#) by [Sid Koshulof](#) with Segev LLP.

"Painful No Matter what Happens": Economists Worried by BC's Financial Reliance on Real Estate

UBC professor says it's bad policy to base a budget around real estate industry. Economic experts are raising concerns over the province's financial reliance on BC's booming real estate market and the new government's promise to try and cool the market down.

The 2016/17 public accounts released earlier this week recorded a \$2.7 billion surplus. Real estate revenue accounted for a big part of that high number, largely due to a 32 per cent growth in the Property Transfer Tax revenue, which brought in roughly \$2 billion in total revenue last fiscal year.

While speaking on *The Early Edition* Tsur Somerville, a professor of economics at the University of British Columbia, said beyond the Property Transfer Tax the income from the hot real estate market feeds several other government revenue streams.

He used examples like the personal income tax on a home builder, the income tax of a real estate agent and the tax on furniture or home appliances, all of which are tied to the strength of the market.

Somerville noted that in BC real estate accounts for a larger share of government revenues than it does in any other province. Read the full *CBC News* [article](#) by Matt Humphrey.

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|----------------|---------------------------------|
| Property Transfer Tax Regulation (74/88) | Aug. 2/17 | by Reg 108/2017 |

WILLS & ESTATES

Wills and Estates News:

Converting a Petition to an Action

Kent v Kent [2017 BCSC 1392](#), discussed converting a Petition to an Action when a court action has been commenced by a Petition and becomes mired in the litigation process, usually due to disputed facts, and requires the petition process to be converted to an action so that examinations for discovery, a trial, discovery of documents and such can be provided for as in an action commenced by a Notice of Claim. Petitions are generally sued when the facts and credibility will not be disputed and the case is argued by affidavits.

36 [Rule 22-1\(7\)\(d\)](#) of the [Supreme Court Civil Rules](#) empowers a court hearing a chambers proceeding to refer a matter to the trial list. Specifically, Rules [22-1\(4\)](#) and 22-1(7)(d) provide as follows.

Read the [full article](#) by Trevor Todd on disinherited.com.

Digital Wills: How the Law of Wills Responds to the Electronic Era

This series examines and compares recommendations made in several BCLI reports and those made by the Law Commission of England and Wales. To read the other posts in the series click [here](#).

Until comparatively recently, a will written on anything but paper or another tangible surface would have been a bizarre concept. As technology continues to advance, however, the need grows for law to be current and responsive to technological development. Not unlike other areas of law, the law of wills has been under scrutiny in relation to the influence of technology on society.

In their recent [consultation paper](#) entitled *Making a Will*, the [Law Commission of England and Wales](#) examines the issue of digital wills and other aspects of the impact of technology on the law of wills. In this post, the provisional proposals made by the Law Commission in their consultation paper are compared to the BCLI's recommendations on recognition of digital wills in our report, [Wills, Estates and Succession: A Modern Legal Framework](#) ("2006 Succession Law report").

What is a Digital Will?

The Law Commission's consultation paper notes that technology may be used in a number of ways to create a will. A will can be, and often is, drafted using word processing software. Even further, digital signatures might be used to execute and attest a will electronically, although not under existing law. Finally, a will conceivably could be drafted, executed, and stored exclusively on an electronic file. The Law Commission refers to this as a "fully electronic will." The Law Commission states that, "[s]ince technology is already widely used to prepare hard copy wills, the intuitive next step is to develop our capacity to execute wills electronically and make use of fully electronic wills."

Read the [full article](#) by Allison Curley and published on the BCLI website.

Sato v. Sato

Things would be simpler, but not nearly as interesting, if everyone remained in the same place.

Hiroiyuki Rex Sato, often referred to as Rex, immigrated with his family to British Columbia in 1969. He became a Canadian citizen in 1975. Following his graduation from university, Mr. Sato lived and worked in several different cities, first in Toronto, then back in Vancouver, followed by the Cayman Islands, Tokyo, Guernsey, and then Luxembourg. He died on March 7, 2015 in Japan where he was being treated for cancer. For Canadian income tax purposes, the Canada Revenue Agency agreed that he became a non-resident of Canada in 1999.

Mr. Sato made a will in Vancouver on May 19, 2011, while visiting. In his will, Mr. Sato appointed his sister Helen Sato as his executor, and divided most of his estate equally between his two sisters. This will was his last.

Makiko Sato and Rex Sato were married in April 2013. At that time, he was living in Luxembourg. He had moved there in 2009, and remained a resident of Luxembourg until his death.

The issue Mr. Justice Funt was asked to decide in *Sato v. Sato*, [2017 BCSC 1394](#), was whether Mr. Sato was domiciled in Luxembourg at the time of his marriage or still in British Columbia. Why is that important? Read the [full article](#) by [Stan Rule](#) of Sabey Rule.

Tax Proposals Affecting Private Companies and Their Shareholders: What Does this Mean?

This is the first in a series of posts arising out of the Liberal Government's paper "Tax Planning Using Private Corporations".

The Liberal Government announced in the March 2017 Budget that it was reviewing the use of tax planning strategies involving private corporations. The Government's view was that these strategies inappropriately reduced personal taxes of high-income earners. A promise was made to release a paper setting out the nature of these issues in more detail as well as proposed policy responses.

On July 17, 2017 Finance Minister Bill Morneau tabled a consultation paper, "Tax Planning Using Private Corporations" (the "Paper"). Draft legislation was also tabled to enact certain of the proposals. If enacted as proposed, there will be sweeping changes to income splitting strategies, the availability of the capital gains exemption, and the use of trusts. It is clear that the taxation of investment holding companies will also be significantly affected.

While the process is styled as a consultation, the content, the length of the paper (63 pages) and the existence of draft legislation makes it clear that the Government is far along in its thinking and has both well-developed and strongly held views. Read the [full article](#) by [Cathie Brayley](#), [Areet Kaila](#) and [Richard Weiland](#) of Clark Wilson LLP.

BC Court of Appeal Finds Failure to Properly Apply the Presumption of Resulting Trust by Lower Court

The BC Court of Appeal decision in *Winstanley v. Winstanley*, [2017 BCCA 265](#), was released July 17, 2017. In finding the trial judge had failed to properly apply the presumption of resulting trust, the Court of Appeal affirmed the elements required to rebut the presumption of a resulting trust and the correct methodology for its application.

The appellant (Andrew) and his brother (Carl) were in dispute over the division of the estate of their mother (Jessie). Andrew was the sole residual beneficiary of Jessie's estate. Jessie's home and bank account were held in joint tenancy with Carl, meaning both of those assets passed to him upon her death. Jessie's Will included an acknowledgement that she held assets jointly with Carl and those would not form part of her estate. This ownership structure was not challenged by Andrew. Read the [full article](#) by [Eileen Vanderburgh](#) with Alexander Holburn + Lang LLP.

Planning for Children: The Public Guardian and Trustee of BC's Role in Guardianship Matters and the Protection of Minors' Property Interests

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

In this paper, J. Cherisse Friesen of Child and Youth Services, Public Guardian and Trustee of BC (PGT) reviews circumstances in which the PGT will play a role in guardianship matters and in protecting a minor's property interests, either through a role as property guardian or trustee of minors' funds. Click [here](#) to view a pdf version of the paper.

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

The content of this document is intended for client use only. Redistribution to anyone other than Quickscribe clients (without the prior written consent of Quickscribe) is strictly prohibited.

QUICKSCRIBE SERVICES LTD.

UNSUBSCRIBE FROM THIS EMAIL SERVICE
To unsubscribe from this service, click [here](#).