

# Quickscribe Reporter

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Vol: XVI – Issue: XII – December 2017

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## QUICKSCRIBE NEWS:

### Quickscribe Welcomes Max Faille – Aboriginal Law

Quickscribe is thrilled to announce that [Maxime Faille](#) will soon begin contributing annotations to Aboriginal law on Quickscribe. Named Benchmark Canada's Aboriginal Lawyer of the Year for 2016, Max Faille is a partner in Gowling WLG's Vancouver office, practising in Indigenous law, public law and general litigation. Max currently serves as national leader of Gowling WLG's Indigenous Law Group and co-leader of the firm's Indigenous Tax Service. His clients consist of Indigenous governments and businesses across Canada, as well as private sector interests seeking to do business with Indigenous communities. Among numerous recognitions and awards for his work in Aboriginal law, Max is recognized as a leading lawyer in Aboriginal law in *Chambers Canada 2016*, *Lexpert's Leading Canadian Lawyers in Energy 2015* and *Leading Canadian Lawyers in Global Mining, 2015-2016*.

### New Search and Hansard Video Tutorials Published

Our new [Search tutorial video](#) will provide you with some tips and tricks on how to more effectively navigate through the Quickscribe legislation database. This short, ten-minute video will help to ensure you are getting full value out of this powerful keyword search tool, which has undergone significant enhancements in recent years. Also available, is a newly published [video tutorial](#) on how to make use of the new Hansard features. Both videos will soon be added to the QS Help Menu, where you can find a full collection of video tutorials.

### Latest Annotations

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

- [Anita Mathur](#), BC Oil & Gas Commission – [Emergency Management Regulation](#), 217/2017
- [Katherine Hardie](#), British Columbia Human Rights Tribunal – [Human Rights Code](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Mental Health Act](#)
- [Melanie Harmer](#), McMillan LLP – [Civil Resolution Tribunal 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.

### Happy New Year!

Our crew at Quickscribe would like to take this opportunity to wish you a happy and prosperous 2018.

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

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View [PDF](#) of this Reporter.

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

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## CATEGORIES

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[FAMILY & CHILDREN](#)    [MOTOR VEHICLE & TRAFFIC](#)  
[FOREST & ENVIRONMENT](#)    [PROPERTY & REAL ESTATE](#)  
[HEALTH](#)    [WILLS & ESTATES](#)  
[LABOUR & EMPLOYMENT](#)

## COMPANY & FINANCE

### Company and Finance News:

#### **CSA: MiFID II Unbundling Won't Require Changes to Canadian Soft Dollar Rule**

The Markets in Financial Instruments Directive II (MiFID II) is the EU legislation that regulates firms providing investment services in financial instruments in the EU. In 2016, the European Commission released a [Delegated Directive](#) under MiFID which proposed the separation of research and trading fees charged to clients by investment firms. This unbundling of commissions is expected to come into force and apply to all EU and third country investment firms providing investment services or activities in the EU effective January 3, 2018.

In Canada, [NI 23-102](#) governs the use of client brokerage commissions and provides that the payment for research and order execution may be bundled into a single transaction commission. Read the [full post](#) on the Stikeman Elliot *Knowledge Hub*.

#### **The Senate Strikes Back?**

The latest chapter in the ongoing saga of the federal government's reforms to the taxation of private companies was released on December 13, 2017.

On that date, the Minister of Finance released the draft legislation and explanatory notes for the revised version of the "income sprinkling" or "TOSI" (tax on split income) rules that were first released on July 18, 2017. The release also includes a guidance document that is intended to provide context and examples of how the Canada Revenue Agency will apply the new rules. The revised TOSI rules have been simplified in comparison to the original version, but they remain complex. However, the focus this blog is not the rules themselves, but a concurrent development from the Senate.

As a result of the strong public reaction to the original July 18, 2017 proposals relating to private corporations, the Senate authorized the Standing Senate Committee on National Finance to study the proposed changes. The Standing Committee conducted meetings across Canada, hearing witnesses and receiving written submissions. Earlier this month, the Standing Committee released its report, *Fair, Simple and Competitive Taxation: The Way Forward for Canada*. Read the [full article](#) by [Darren Lund](#) with Fasken Martineau DuMoulin LLP.

#### **With the CRA Blocking More than Half of Its Calls, It's Time for a Taxpayer Bill of Rights**

A basic and fundamental requirement of an effective tax system is that it should demand integrity from taxpayers, and administer the system in a similar manner for the benefit of taxpayers. In the interests of promoting "fairness for the middle class," Canada should legislatively enact the Taxpayer Bill of Rights, give it some teeth and force of law, and ensure fair tax administration.

The Canada Revenue Agency (CRA) requires all taxpayers to declare their income voluntarily and honestly. The sanctions for not doing so are serious for taxpayers. However, the Agency has an equal obligation to provide taxpayers with complete, accurate, clear, and timely information. The evidence is overwhelming: The CRA is falling down in the performance of its public mandate. The victims of its failure are low and middle-income taxpayers who cannot afford expensive professional advice and turn to the agency for their information. Canada did not legislate its Taxpayer Bill of Rights. Instead, we settled for an unlegislated declaration by the CRA of 16 so-called "rights," which have no force of law. One of these is that the CRA will provide timely and accurate information to taxpayers. The evidence in the Auditor General's Report proves otherwise. Taxpayers are not getting timely information, and, in many cases, are being given erroneous information. Read the full *Financial Post* [article](#) by [Vern Krishna](#).

#### **BC Securities – Policies & Instruments**

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

- [31-103](#) – Adoption of amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information and related policies*
- [31-351](#) – Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin #0736-M *Complying with requirements regarding the Ombudsman for Banking Services and Investment*
- [11-337](#) – CSA Staff Notice 11-337 *Notice of Local Amendments and Changes in Alberta, Manitoba and New Brunswick*
- [13-315](#) – CSA Staff Notice 13-315 (Revised) – Securities Regulatory Authority Closed Dates 2018
- [21-320](#) – CSA Staff Notice 21-320 – *Update: National Instrument 21-101 Marketplace Operation and Related Companion Policy – Dealing with Government Debt Transparency*
- [23-320](#) – CSA Staff Notice 23-320 *Consideration of the Markets in Financial Instruments Directive (MiFID II) Unbundling Requirements on the Regulatory Requirements in Canada*
- [96-302](#) – Multilateral CSA Notice 96-302 - *Variation, amendment, or revocation and replacement of Blanket Order Relief from Certain Derivatives Data Reporting Requirements under Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting*

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

### FICOM News

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

- [Letter to BC Authorized Trust Companies](#) – Change in Filing Requirements
- [Letter to BC Authorized Life Insurance Companies and Fraternal Benefit Societies](#) – Change in Filing Requirement
- [Letter to CEOs/General Managers, BC Credit Unions](#) – Residential Mortgage Loans Report and Completion Guide - Revised
- [Letter to BC Incorporated Life Insurance Companies and Insurance Societies](#) – Adoption of the Life Insurance Capital Adequacy Test (LICAT)
- [Insurance Bulletin](#) – Filing Requirements for British Columbia Incorporated Life Insurance Companies and Insurance Societies
- [Letter to BC Life Insurance Companies and Insurance Societies](#) – Information Bulletin INS 17-001

Visit the FICOM [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Power Corporations Valuation Regulation (217/86)	Dec. 20/17	by <a href="#">Reg 244/2017</a>
Income Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, sections 16, 18, 20, 26, 27, 30, 43, 47, and 48 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2017</a>
Managed Forest Land and Cut Timber Values Regulation (90/2000)	Dec. 20/17	by <a href="#">Reg 242/2017</a>
National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (226A/2009)	Dec. 4/17	by <a href="#">Reg 210/2017</a>
National Instrument 33-109 <i>Registration Information</i> (226B/2009)	Dec. 4/17	by <a href="#">Reg 209/2017</a>
Provincial Sales Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, sections 70 and 72 only (in force by <a href="#">Reg 213/2017</a> ), <a href="#">Budget Measures</a>

		<a href="#">Implementation Act, 2017</a>
Railway and Pipeline Corporations Valuation Regulation (203/86)	Dec. 20/17	by <a href="#">Reg 245/2017</a>
Telecommunications Corporations Valuation Regulation (226/86)	Dec. 20/17	by <a href="#">Reg 246/2017</a>
Tobacco Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, section 76 only (in force by <a href="#">Reg 213/2017</a> ), <a href="#">Budget Measures Implementation Act, 2017</a>
Training Tax Credits Regulation (243/2007)	<b>RETRO to</b> May 24/17	by <a href="#">Reg 220/2017</a>
	<b>RETRO to</b> Sept. 1/17	

## ENERGY & MINES

### Energy and Mines News:

#### **BC Hydro Selects Preferred Contractor for Second Major Component of Site C**

BC Hydro has selected a preferred contractor for the Site C generating station and spillways, work that is expected to cost well over \$1 billion.

The contract with Aecon-Flatiron-Dragados-EBC Partnership still has to be finalized, with the award of the contract expected to be complete by the end of February. Work would not begin until the spring.

In an announcement, BC Hydro said should a final contract be reached with Aecon-Flatiron-Dragados-EBC (AFDE) Partnership, Hydro's board of directors would need to sign off on it.

The work on the powerhouse, penstocks, spillways and power intakes for the dam is the second largest contract for the project. At peak construction, anticipated to be in 2021, there would be about 1,600 people working on the generating station and spillways. Read *The Vancouver Sun* [article](#).

#### **China's Appetite for Lithium on Display in Canadian Takeover**

Beijing and Shanghai-based Nextview New Energy Lion Hong Kong will pay \$2.61 cash per share for Vancouver's Lithium X, a TSX-listed exploration and development company. In a sign the race to secure the materials for electric vehicle batteries is heating up, a Chinese-backed investment group said it would pay \$265 million to purchase a Canadian lithium exploration company with no reported income.

Under the deal announced on [December 18], Beijing and Shanghai-based Nextview New Energy Lion Hong Kong will pay \$2.61 cash per share, reflecting a 22.5 per cent premium on the closing price on December 15 of Vancouver's Lithium X, a TSX-listed exploration and development company with lithium projects in Argentina.

This marks Nextview's second deal in as many weeks to secure access to lithium, having last week purchased a 20 per cent stake in Banacora Minerals, which has a lithium project in Mexico. Nor is it the only Chinese company making such deals: Earlier this year, Sinochem, China's state chemical company along with several other Chinese companies placed competing bids to purchase a \$4 billion stake in Chile's SQM, a giant lithium producer. Read *The Vancouver Sun* [article](#).

#### **Pressing On: BC Government Announces Decision to Complete Construction of Site C Clean Energy Project**

On December 11, 2017, the BC government announced its decision to complete construction of BC Hydro's 1,100-megawatt Site C Clean Energy Project (Site C), concluding that cancelling the project mid-construction would have imposed a \$4 billion burden on provincial taxpayers, comprising \$2.1 billion already spent and an

estimated \$1.8 billion in termination and site remediation costs. The BC government also confirmed that the capital cost estimate for Site C has been updated to \$10.7 billion from BC Hydro's original estimate of \$7.9 billion.

A copy of the BC government's press release, which includes links to relevant background materials, is available [here](#).

In moving forward with the project, the BC government also announced a Site C "turnaround plan" to contain project costs and secure additional project-related benefits, including:

- a new "Project Assurance Board" to provide oversight over future contract procurement and management, project deliverables, environmental matters and quality assurance;
- a new community benefits program to ensure project benefits to local communities and to increase the number of apprentices and First Nations workers working on the project; and
- a new BC Food Security Fund to be funded by Site C revenues and dedicated to supporting farming and agricultural innovation and productivity in the province.

Read the [full article](#) by [Sven Milelli](#), [Selina Lee-Andersen](#) and [Morgan Troke](#) with McCarthy Tétrault LLP.

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

## FAMILY & CHILDREN

### Family and Children News:

#### Court Document Details Custody Battle for Sisters in Double Homicide

The father of two girls found dead in an Oak Bay apartment [December 25th] once threatened to "blow up the house" during an argument with their mother and displayed several examples of poor judgment in parenting, a BC judge wrote earlier this year.

Custody of Aubrey Berry, 4, and Chloe Berry, 6, was the central issue when Andrew Berry and Sarah Cotton spent five days at a trial in BC Supreme Court in November 2016, [according to a court document posted online](#).

This spring, BC Supreme Court Justice Victoria Gray outlined a shared parenting schedule despite her concerns about Andrew Berry's past behaviour. Those concerns included a previous restraining order and two investigations by the Ministry of Children and Family Development (MCFD). Read the [CBC article](#).

#### Court of Appeal Ruling All But Ends Hope for Parents in Motherisk Case

For the parents in a hard-fought Motherisk case that has highlighted cracks in the child welfare system related to the treatment of Indigenous families, the effect of delay and the reliance on flawed forensic evidence, hope of regaining access to their 10-year-old daughter has been all but extinguished.

The Court of Appeal has overturned a decision that reopened the possibility of continued contact with the child, who has languished in legal limbo since she was apprehended in 2012, when her mother failed a flawed drug test from the Hospital for Sick Children's Motherisk lab.

In a decision released [December 1, 2017], the Court of Appeal found Superior Court Justice Grant A. Campbell, who heard the first appeal in Kitchener, was wrong to overturn the trial judge's "no access" order and "erred in his consideration of the child's Indigenous heritage." The parents say they plan to seek leave to appeal to the Supreme Court. Read the [full article](#) by Rachel Mendleson on the *Star*.

Act or Regulation Affected	Effective Date	Amendment Information
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Crime Victim Assistance (General)

Regulation (161/2002)

Dec. 12/17 by [Reg 226/2017](#)**FOREST & ENVIRONMENT****Forest and Environment News:****Truck driver shortages hitting Canada's forest products sector**

A shortage of truck drivers is hampering the country's forest sector as shipments have been delayed and at least one producer was forced to slow production because of a lack of wood chips.

Weyerhaeuser Co. chief executive Doyle Simons said Friday that availability of transportation services has been a challenge, especially in the past quarter.

"We, like other companies, are, in fact, seeing that type of tightness," he said during a conference call about the company's results.

Simons said the company faced truck and rail disruptions, mainly in December, and took a US\$10 million to US\$15 million hit in the fourth quarter. Read the *Financial Post* [article](#).

**BC Supreme Court Grants Injunction against Fish Farm Protesters**

The BC Supreme Court has granted an injunction against a number of people who have trespassed on a fish farm company's property in recent months.

Marine Harvest Canada applied for the injunction for their licensed aquaculture site on Midsummer Island, one of several fish farms they operate in the Broughton Archipelago, east of Port Hardy.

Justice Peter Voith ruled the injunction was warranted because the protesters' actions interfered with Marine Harvest's operations, prevented the harvest and removal of salmon from the facility, and included threatening behaviour toward staff. Read full *CBC* [article](#).

**BC Court Rules American Indigenous Man has Right to Hunt in Canada**

An American Indigenous man's right to hunt in Canada has been upheld by a B.C. Supreme Court judge because his ancestors traditionally hunted in this country.

Richard Desautel was charged under the *Wildlife Act* with hunting without a licence and hunting big game while not a resident of BC after he shot and killed an elk near Castlegar in 2010. Desautel, a member of the Lakes Tribe in Washington state, argued in provincial court that he was exercising his constitutional right to hunt for ceremonial purposes.

The Lakes Tribe was described in court as a "successor group" to the Sinixt people, who lived, hunted and gathered in BC's Kootenay region prior to first contact with European settlers. Read the full *Vancouver Sun* [article](#).

**Forest Legislation Updates**

Effective December 12, 2017, changes were made to the *Forest Act* and the *Allowable Annual Cut Administration Regulation*, aiming to improve how timber partitions are enforced throughout British Columbia. They enhance the ability for the Province to better track and monitor the harvest of partitioned timber under a minister's order, and allow the minister to grant licensees relief from penalty in circumstances beyond the licence holder's control.

A transitional provision in the *Great Bear Rainforest (Forest Management) Act* was repealed on December 31, 2017 that allowed for the enactment of regulations to effectively bring the Act into operation and resolve any errors, ambiguities or inconsistencies arising in the Act.

**Environmental Appeal Board Decisions**

There were two Environmental Appeal Board decisions in the month of December.

***Environmental Management Act***

- [Gibsons Alliance of Business and Community Society; Marcia Timbres v. Director, Environmental Management Act](#) [Stay Application – Denied]
- [Revolution Organics, Limited Partnership v. A/Deputy Director, Regional Operations Branch; Director,](#)

[Environmental Management Act](#) [Preliminary Application – Appeals Allowed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Allowable Annual Cut Administration Regulation (69/2009)	Dec. 12/17	by <a href="#">Reg 237/2017</a>
Cut Control Regulation (578/2004)	Dec. 12/17	by <a href="#">Reg 227/2017</a>
Great Bear Rainforest (Forest Management) Act	Jan. 1/18	by 2016 Bill 2, c. 16, section 70 (3)
Hunting Regulation (239/2017)	Dec. 18/17	by <a href="#">Reg 239/2017</a>
Limited Entry Hunting Regulation (134/93)	Dec. 18/17	by <a href="#">Reg 239/2017</a>
Spill Reporting Regulation (187/2017)	Dec. 5/17	by <a href="#">Reg 221/2017</a>
Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	Dec. 13/17	by <a href="#">Reg 238/2017</a>
Water Sustainability Regulation (36/2016)	Dec. 13/17	by <a href="#">Reg 238/2017</a>

## HEALTH

### Health News:

#### **An Update on Medical Assistance in Dying**

The Government of Canada is developing regulations to establish a monitoring system in respect of medical assistance in dying (MAID), and it recognizes the importance of timely public reporting on the matter. To that end, its [2nd Interim Report on Medical Assistance in Dying in Canada](#) provides information on requests for MAID made between January 1 and June 30, 2017, and includes some notable findings.

To summarize a few statistics gathered from participating jurisdictions, during the first half of 2017 there were reportedly more than 1000 medically assisted deaths, which represents an almost 50% increase since the first six months of the legislation being in place. However, taking all deaths in Canada into account this still represent less than 5% of overall deaths. There has also been an increase in the number of deaths administered outside of a hospital setting, although it is not yet known if this is a signal of improved facilitation for home-based assisted deaths or other factors (e.g. lack of services in institutions in smaller communities). In looking at demographics, the average age of the patient was 73. Read the [full article](#) by Natalia Angelina with Hull & Hull LLP.

#### **Advocates, Families Speak Out in Defence of BC's Mental Health Act**

Frederick Dawe remembers the night about 30 years ago that his six-foot-eight son experienced a psychotic break in the emergency room of a Vancouver-area hospital.

"He just lost it. He picked up a couch, swung it around the room, cleaned the room out," Dawe said. "It took four security guards to hold him down while they gave him an injection."

The month-long hospital stay that followed was one of several where Peter Dawe was kept against his will. Both he and his father say those treatments saved his life.

"You're not of sound mind," said Peter, now 50. "When you're in that state you're not thinking properly." Dawe and his son are among those speaking out against demands that the British Columbia government overhaul the

[Mental Health Act](#) to make it harder to involuntarily detain someone for treatment. Read the [full article](#) by Geordon Omand on CTV News.

Act or Regulation Affected	Effective Date	Amendment Information
Health Professions General Regulation (275/2008)	Dec. 4/17	by <a href="#">Reg 219/2017</a>
Laboratory Services Regulation (52/2015)	Dec. 12/17	by <a href="#">Reg 229/2017</a>
Medical and Health Care Services Regulation (426/97)	Dec. 12/17	by <a href="#">Reg 229/2017</a>
	Jan. 1/18	by <a href="#">Reg 208/2017</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### Parliamentary Secretary Releases Final Report and Recommendations on Re-Establishment of BC Human Rights Commission

On December 10, 2017, the Parliamentary Secretary issued his report and recommendations to the Attorney General of BC regarding the re-establishment of the Commission (the "Report"). Entitled "A Human Rights Commission for the 21st Century: British Columbians Talk about Human Rights", the Report sets out 25 recommendations on the creation, purpose, functions, powers, and priorities of the Commission, as well as recommendations for the Tribunal, the Human Rights Clinic, and the Attorney General.

The Parliamentary Secretary distils what he gathered from the public engagement process in the introduction to the Report:

The general consensus is that the new commission must be modern, efficient and effective. It should educate the public about human rights, promote equality, awareness and respect, and address systemic abuse. It should also complement not replace the current work of the BC Human Rights Tribunal and Human Rights Clinic. I have heard British Columbians say that BC should aspire to be the human rights leader by adopting innovative practices to ensure that individuals, no matter where they live, have equal access to justice and to the supports they need to turn human rights ideals into reality. Read the [full article](#) by [Christopher McHardy](#) of McCarthy Tétrault.

#### Casino Workers' Union Stunned by BCLC's \$500,000 Freedom of Information Search Fee

A union that requested BC Lottery Corporation records concerning anti-money laundering compliance at casinos including River Rock in Richmond, is prepared to challenge a "prohibitively high" \$500,000 search fee. Unite Here, the union that made the request under BC's [freedom of information laws](#), represents casino workers across North America. A document obtained by Postmedia shows that Unite Here's Marc Hollin requested from BCLC: "copies of all correspondence, reports, investigations, audits, and complaints regarding anti-money laundering compliance of Great Canadian Gaming Corporation locations," including River Rock Casino, Casino Nanaimo, Hard Rock Casino and Hastings Park Casino. Hollin requested records from Nov. 2012 to Nov. 2017, including all correspondence between Great Canadian Gaming, BCLC, and B.C.'s gaming policy enforcement branch, regarding anti-money laundering compliance. A Dec. 6 response from BCLC says that freedom of information law allows a public body to "[charge a fee for certain limited costs of providing the requested information](#)." Read *The Vancouver Sun* [article](#).

#### Who, Me? Could Be: Supreme Court of Canada Extends Protections Regarding Employment under the BC Human Rights Code

In a landmark case, the Supreme Court of Canada (SCC) has extended the protection it offers to employees from discrimination in the workplace to encompass discrimination perpetrated by individuals who have a different employer: *British Columbia Human Rights Tribunal v Schrenk*, [2017 SCC 62](#) (*Schrenk*).



This case answers in the affirmative the question of whether the BC [Human Rights Code](#) (Code) applies to discrimination perpetrated by someone other than the complainant's employer or superior. The decision will have significant implications for employers and all those involved in the workplace.

**Facts**

The case involved two individuals who worked for two different employers at the same worksite. Mr. Schrenk was employed by a contracting company (Clemas) as the site foreman. Mr. Sheikhzadeh-Mashgoul was a civil engineer working for another consulting company and was the site administrator in charge of supervising the work done by Clemas. Mr. Schrenk repeatedly made highly derogatory statements to Sheikhzadeh-Mashgoul and others about Mr. Sheikhzadeh-Mashgoul's sexual orientation, religion, and place of birth. Mr. Sheikhzadeh-Mashgoul subsequently filed a complaint of discrimination with the British Columbia Human Rights Tribunal, alleging that Clemas and Schrenk had discriminated against him under [section 13](#) of the Code.

Read the [full article](#) by [Chanelle Wong](#) with Norton Rose Fulbright LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Jan. 1/18	by <a href="#">Reg 193/2017</a>
Occupational Health and Safety Regulation (143/2017)	Jan. 1/18	by <a href="#">Reg 143/2017</a>
Salary Range Regulation (152/2017)	Dec. 1/17	by <a href="#">Reg 218/2017</a>

**LOCAL GOVERNMENT**

**Local Government News:**

**Local Governments May Owe a Duty of Care to Process Development Applications in a Timely Way**

In *Wu v. Vancouver (City)*, [2017 BCSC 2072](#), Madam Justice Murray of the BC Supreme Court held that the City of Vancouver owed a duty of care to the plaintiffs, the purchasers of a home in the Shaughnessy area, who had applied for a development permit for the demolition of an existing house and construction of a new house. According to the decision, the City owed the plaintiffs a duty to make a final decision on their permit application, in accordance with the applicable statutory framework, within a reasonable time. Madam Justice Murray concluded that the City was negligent in this case since it acted in bad faith and failed to conduct itself in accordance with the standard of a reasonably competent municipality when dealing with the plaintiffs' application.

The plaintiffs were interested in building a home in the Shaughnessy area of Vancouver. They found a property with the assistance of a realtor. The existing house was not suitable for their needs, and with the assistance of an architect they made inquiries of the City to determine whether the existing house could be demolished and a new house constructed. Through those inquiries, they learned that the house was not on the City's heritage register, but was included in an inventory of buildings that might have heritage value. The plaintiffs were satisfied that although the City might regard the house as having heritage value, and might encourage them to retain the house, in order to prevent the demolition of the house the City would have to designate the house as a heritage structure by bylaw, and would have to compensate the plaintiffs for any resulting loss in market value. With that knowledge, the plaintiffs decided to purchase the house. Read the [full article](#) by Peter Johnson, Jeff Locke, Andie Britton-Foster with Stewart McDannold Stuart.

**Abandoned and Wrecked Vessels**

The federal government has introduced several new initiatives regarding abandoned and wrecked vessels. This article provides information on the National Strategy to Address Abandoned and Wrecked Vessels; on [Bill C-64, Wrecked, Abandoned or Hazardous Vessels Act](#); and on the call for proposals for the Abandoned Boats Program.

In November 2016, the Government of Canada launched the \$1.5 billion Oceans Protection Plan to improve

marine safety and responsible shipping, protect Canada's marine environment and help advance Indigenous reconciliation. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Buildings and Other Structures Bylaws Regulation (86/2004)	<b>REPEALED</b> Dec. 15/17	by <a href="#">Reg 183/2017</a>
Bylaw Notice Enforcement Regulation (175/2004)	Dec. 6/17	by <a href="#">Reg 224/2017</a>
Community Charter	Dec. 15/17	by 2015 Bill 3, c. 2, sections 47 and 49 only (in force by <a href="#">Reg 192/2017</a> ), <a href="#">Building Act</a>
Eligible Port Property Designation Regulation (309/2010)	Dec. 12/17	by <a href="#">Reg 228/2017</a>
Liquor Control and Licensing Regulation (241/2016)	Dec. 12/17	by <a href="#">Reg 231/2017</a>
Local Elections Campaign Financing Expense Limit Regulation (309/2016)	<b>RETRO to</b> Oct. 31/17	by <a href="#">Reg 232/2017</a>
Local Government Act	Dec. 15/17	by 2015 Bill 3, c. 2, sections 56 and 57 only (in force by <a href="#">Reg 192/2017</a> ), <a href="#">Building Act</a>
Port Land Valuation Regulation (304/2010)	Dec. 12/17	by <a href="#">Reg 235/2017</a>
Restricted-Use Property Valuation Regulation	Dec. 12/17	by <a href="#">Reg 236/2017</a>
Safety Standards General Regulation (105/2004)	Dec. 15/17	by <a href="#">Reg 45/2017</a>

## MISCELLANEOUS

### Miscellaneous News:

#### How Tricky is Consent? Let Us Count the Ways

Consent is a weighted word these days, and people in many sectors are trying to decide when it's necessary, how it must be given and how it can be recognized.

Sometimes the question of whether consent was granted can be explained using the simple metaphor of a cup of tea: does the other person want tea? Yes or no?

When it comes to the gathering and sharing of personal information for business purposes, however, the question of consent becomes a lot more complex.

This fall the Office of the Privacy Commissioner released for consultation draft guidelines for obtaining meaningful online consent under [PIPEDA](#). The [Privacy and Access Law Section](#) and the [CCCA](#) submitted their response in December.

"The requirement for consent is a foundational component of PIPEDA," the Sections say in the [submission](#). "However, for consent to be valid – to allow individuals to exercise greater control over their personal information – consent must be meaningful." Read the [full article](#) on *National Magazine* by Kim Covert of the

Canadian Bar Association.

### Timing of an Occurrence Matters

Most liability policies may be classified as either occurrence or claims-made policies. An occurrence policy responds where an event occurs during the policy period that gives rise to a covered loss. A claims-made policy responds where a claim is made against the insured party during the policy period. Recently, the British Columbia Supreme Court concluded that, when determining whether a loss is covered under an occurrence policy, the proximity in time between the occurrence and the actual loss may be relevant, depending on the policy wording.

The insured, R.C Heating & Gasfitting Ltd. ("R.C. Heating") was in the business of installing gas systems between August 2001 and September 2007. In February and March, 2005, R.C. Heating installed a gas system at a property on Whitetail Lake in British Columbia. During this time, R.C. Heating held a third party liability policy issued by Sovereign General Insurance Company ("Sovereign"). In 2007, R.C. Heating ceased operations and its Sovereign policy was not renewed.

On August 13, 2014, an explosion occurred at the property on Whitetail Lake, resulting in serious bodily injuries to members of a family who were renting the property at the time. An action was commenced and R.C. Heating was added as a party to that action.

R.C. Heating tendered the claim to Sovereign who refused to defend it on the basis that there had not been an "occurrence" during the policy period. R.C. Heating took the position that, because the policy was in place at the time of its alleged negligent acts, there had been an "occurrence" during the policy period. The matter turned on whether R.C. Heating's alleged negligent work in 2005 constituted an "occurrence" under the policy. Read the [full article](#) by [Sean Tessarolo](#) of Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Farm Incomes Plans Regulation (123/2004)	Dec. 19/17	by <a href="#">Reg 241/2017</a>
Organic Certification Regulation (304/2016)	Jan. 1/18	by Reg 304/2016, section 10

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### Engineer Report Excluded Based on a "Where's the Science?" Objection

Reasons for judgement were published this week by the BC Supreme Court, Vancouver Registry, excluding the expert opinion of an engineer based on a report lacking adequate scientific foundation.

In the recent case ([Young v. ICBC](#)) the Plaintiff alleged being involved in a sideswipe collision caused by an unidentified motorist. ICBC argued no such collision occurred and instead the Plaintiff likely collided with a concrete barrier. ICBC attempted to introduce into evidence an engineering report to back up their theory. The court refused to introduce the report and in doing so provided the following reasons criticizing its scientific foundation:

*[6] The plaintiff's objection was summed up by her counsel in the phrase "where is the science?". Mr. Antifaev submits that the report's shortcomings go well beyond the question of weight, and go to the very basis upon which expert evidence is admissible. It involved no scientific analysis, measurements or research, but consists primarily of argument and speculation. Mr. Sdoutz did not visit the scene of the accident but relies on Google Maps. He did not measure anything, did not see the car, and cites no accident information, statistics or testing. The hallmarks of scientific analysis, Mr. Antifaev asserts, are missing. Moreover, argues Mr. Antifaev, the report is riddled with what must be considered at least confirmation bias, simply feeding back what ICBC requested in an email sent by an adjuster on June 9, 2017.*

Read the [full article](#) by [Erik Magraken](#) with McIsaac and Company.

### CVSE Bulletins & Notices

The following notices have been posted in December by CVSE:

- [Notice NSC 02-17](#) – Federal Proposal for ELDs Published in Canada Gazette Part 1
- [VI Notice 03-17](#) – Trailer Inspection Exemption Order Amendments

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Dealer Act	Jan. 1/18	by 2016 Bill 9, c. 6, sections 1, 5, 8, 14, 23, 24 and 29 only (in force by <a href="#">Reg 200/2017</a> ), <a href="#">Motor Dealer Amendment Act, 2016</a>
Motor Dealer Act Regulation (447/78)	Jan. 1/18	by <a href="#">Reg 200/2017</a>
Motor Dealer Consignment Sales Regulation (101/95)	Jan. 1/18	by <a href="#">Reg 200/2017</a>
Motor Dealer Customer Compensation Fund Regulation (102/95)	Jan. 1/18	by <a href="#">Reg 200/2017</a>
Motor Fuel Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, section 68 only (in force by <a href="#">Reg 213/2017</a> ), <a href="#">Budget Measures Implementation Act, 2017</a>
Special Direction IC2 to the BC Utilities Commission (307/2004)	Dec. 18/17	by <a href="#">Reg 240/2017</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### Mortgage Lending: Case Law Update and Best Practices

*From CLEBC website – Practice Points*

In this paper, Timothy J. Lack of Lunny Atmore LLP discusses practical takeaways from: 1) recent interesting case law on mortgage lending; and 2) best practices relating to Form B, guarantees and covenants to pay, interest, second mortgages, and GST and priority concerns. Click [here](#) to view a pdf version of the paper.

#### BC Supreme Court Finds Designation of Parking Stalls as Limited Common

##### Property to be a Mistake, Orders Correction of Strata Plan

In *Chow v The Owners, Strata Plan NW 3243*, [2017 BCSC 2331](#), the Supreme Court of British Columbia considered the application of [section 14.12](#) of the [Strata Property Regulation](#) (which allows for the correction of errors in a strata plan) to a dispute over parking stalls. The court found that the section's conditions were met and ordered correction of the strata plan, removing designations of limited common property.

The case turned on

*classification of parking spaces in a strata complex called Bristol Gardens, located in Richmond, British Columbia. At issue is the designation of certain carport-type parking spaces as either common property, to be used by visitors to the complex, or limited common property, for the exclusive use of owners of immediately adjacent units.*

Marketing of strata lots from the early days of the strata property characterized the carports as including parking spaces for visitors, but the strata plan showed the carports as being designated limited common property. Read the [full article](#) by Kevin Zakreski with BCLI.

Act or Regulation Affected	Effective Date	Amendment Information
Manufactured Home Park Tenancy Act	Dec. 11/17	by 2017 Bill 16, c. 18, sections 1, 3 to 6, 23 and 25 only (in force by <a href="#">Reg 225/2017</a> ), <a href="#">Tenancy Statutes Amendment Act, 2017</a>
Manufactured Home Park Tenancy Regulation (481/2003)	Dec. 8/17	by <a href="#">Reg 225/2017</a>
Residential Tenancy Act	Dec. 11/17	by 2017 Bill 16, c. 18, sections 1, 3 to 6, 23 and 25 only (in force by <a href="#">Reg 225/2017</a> ), <a href="#">Tenancy Statutes Amendment Act, 2017</a>
Residential Tenancy Regulation (477/2003)	Dec. 11/17	by <a href="#">Reg 225/2017</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Supreme Court of Canada Decision on Proprietary Estoppel in *Cowper-Smith v. Morgan*

The Supreme Court of Canada rendered its judgment in *Cowper-Smith v. Morgan*, [2017 SCC 61](#), this last Thursday, December 14, 2017. The main legal issue is whether a person who relies on a promise that he will receive property to his detriment may become entitled to the property even if the person who made the promise did not own the property at the time she made the promise. Let me explain.

Elizabeth Flora Cowper-Smith died in 2010. She had three children: Gloria Morgan, Max Cowper-Smith and Nathan Cowper-Smith. In her will, she named her daughter as her executor and she provided that after payment of debts, her estate would be divided equally among her three children. She had investments and her family home in Victoria, British Columbia. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

#### Enforcing Settlement Agreements

Probably most litigation lawyers have experienced the situation where a settlement is made on behalf of their client who then subsequently changes his or her mind.

I have found this to have occurred on several occasions in recent years after a mediation of many hours of negotiations concluding in an agreement is signed by all the parties, only to have one of the parties to express "settlement remorse" soon after and try and get out of the settlement.

The law relating to the enforcement of settlement agreements was discussed in *Gaida Estate v. McLeod*, [2013 BCSC 1168](#).

The court adopted the Alberta decision of *Laughaug V. Canadian Immigration Specialists Ltd.*, 2011 ABQB 609, where the court identified four situations in which a settlement agreement would be set aside:

- a. mutual mistake and a fresh action could be commenced to achieve the same effect;
- b. misapprehension or mistake by the lawyer entering into the agreement, but only if court intervention is necessary to give effect to the settlement;
- c. the lawyer settles without authority and the third party is aware of that limited authority;
- d. evidence that the lawyer entered into the agreement, in defiance of express and specific instructions from the client.

In British Columbia the legal principles applicable to the enforcement of settlement agreements are stated in the judgment *Roumanis v Hill*, [2013 BCSC 1047](#). Read the [full article](#) by [Trevor Todd](#) on his blog *disinherited – Estate Disputes and Contested Wills*.

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