

Quickscribe Reporter

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QUICKSCRIBE NEWS:

Legislature to Resume September 8th

The Legislative Assembly will resume on the morning of Friday, September 8th, to prorogue the 1st session of the 41st Parliament. The opening of the 2nd session will take place later in the afternoon.

NDP Can Push Much of its Agenda through Cabinet, Not Legislature

BC's incoming NDP government could fulfil many of its campaign promises through cabinet orders and the annual provincial budget, bypassing the need to squeak numerous bills through the legislature with its one-vote margin. An analysis of the NDP's election platform and its power-sharing deal with the BC Green party indicates as much as three-quarters of the New Democrat agenda could be implemented through cabinet orders, cabinet-approved changes to regulations, ministerial orders and allocations in the annual budget, rather than a host of specific bills that would each require a vote in the house. That could free premier-designate John Horgan's administration to govern largely outside the legislature, where the Greens and NDP hold a tenuous one-member advantage over the Liberals, and in which every stage of debating and passing bills would be fraught with potential amendments and defeat. While it may be faster and more convenient to govern by cabinet order, that route could also open the Horgan government to criticism it was making major policy decisions in secret without public debate in the legislature. Cabinet and ministerial orders only become public days after being signed. Read the [Vancouver Sun article](#).

Latest Annotations

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

- [Margaret Mason](#), Norton Rose Fulbright LLP – [Societies Act](#)
- [Eileen Vanderburgh](#), Alexander Holburn + Lang LLP – [Personal Information Protection Act](#)
- [OnPoint Legal Research Corporation](#) – [Human Rights Code](#), [Securities Act](#), [Local Government Act](#), [Limitation Act](#), [Chartered Professional Accountants Act](#), [Motor Vehicle Act Regulations](#) (26/58), [Fraudulent Conveyance Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)

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

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

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

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COMPANY & FINANCE

Company and Finance News:

Department of Finance Proposes New Oversight Framework for Retail Payments

On July 7, 2017, Canada's Department of Finance released a long-awaited consultation paper on the proposed regulation of retail payments in Canada. The consultation paper, titled: [A New Retail Payments Oversight Framework](#) (Consultation Paper) articulates the main components of a proposed federal oversight framework for retail payments (Proposed Framework).

This is a significant development in the Canadian payments landscape as service providers in the retail payments space are generally not regulated except in limited circumstances and in any event, not from a safety and soundness perspective. This is because under the current regulatory framework, focus is placed on the type of entity performing the payment activity and provided that the entity is not taking deposits, not on the actual activity being performed; in other words "who you are, and not what you do". As such, non-traditional payment service providers, including fintechs (collectively, PSPs), have not previously been subject to regulatory oversight. Read the [full article](#) by [Mena Bellofiore](#) and [Jacqueline Shinfield](#) of Blake, Cassels & Graydon LLP.

Will the New NAFTA Allow Canadian Governments to Ensure that Private Data Collected from Canadians Will Not Be Stored Outside this Country?

As we get ready to enter what promises to be a very contentious renegotiation of the North American Free Trade Agreement (NAFTA), we should keep in mind that supply-managed milk and chickens are not the only things the Americans will want to have on the table. The list of items for negotiation includes a number of sectors that were not included in the original agreement, often because those industries did not exist in the mid-1990s, at least not on the scale they do now.

In fact, the United States has made it explicit that it intends to "establish rules to ensure that NAFTA countries do not impose measures that restrict cross-border data flows and do not require the use or installation of local computing facilities." British Columbia's public sector privacy law does just that, and we can expect that the domestic data-storage requirement in its [Freedom of Information and Protection of Privacy Act \(FIPPA\)](#) will be a bone of contention. Read the [full article](#) on the *Policy Options* website by Vincent Gogolek.

BC Securities – Policies & Instruments

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

- [94-102](#) – National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
Adoption – Multilateral Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- [25-101](#) – CSA Notice and Request for Comment - Relating to Designated Rating Organizations - Proposed Amendments to National Instrument 25-101 *Designated Rating Organizations*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information*, National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, National Instrument 44-102 *Shelf Distributions*, National Instrument 45-106 *Prospectus Exemptions*, National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 81-102 *Investment Funds* and National Instrument 81-106 *Investment Fund Continuous Disclosure* and Proposed Changes to Companion Policy 21-101CP *Marketplace Operation* and Companion Policy 81-102CP *Investment Funds*
- [94-501](#) – Notice of adoption of BC Instrument 94-501- Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing
- [94-301](#) – CSA Staff Notice 94-301 *Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing*
- [31-349](#) – CSA Staff Notice 31-349 *Changes to Standard Form Reports for Close Supervision and Strict*

Supervision Terms and Conditions

- [33-320](#) – CSA Staff Notice 33-320 The Requirement for True and Complete Applications for Registration
- [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

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	July 1/17	by Regs 41/2017 and 89/2017
National Instrument 94-102 Derivatives <i>Customer Clearing and Protection of Customer Collateral and Positions</i> (148/2017)	NEW July 3/17	see Reg 148/2017

ENERGY & MINES

Energy and Mines News:

Supreme Court of Canada Releases Landmark Decisions on Role of Regulatory Bodies in Fulfilling the Crown's Duty to Consult with Indigenous Peoples

On July 26, 2017, the Supreme Court of Canada released two landmark decisions in the companion cases of *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., et al.* and *Hamlet of Clyde River, et al. v. Petroleum Geo-Services Inc. (PGS), et al.*

These cases were heard by the Supreme Court on November 30, 2016. Together, they raise the important question of the proper role of administrative boards and tribunals in ensuring the Crown's duty to consult and accommodate Indigenous people is fulfilled prior to the issuance of decisions with the potential to affect Indigenous rights.

The Court dismissed the appeal in *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., et al.*, holding that the National Energy Board (the "Board") adequately consulted the Chippewas of the Thames First Nation (the "Chippewas") and that the potential impacts of the approved project were minimal. The Court found that the Board adequately consulted prior to approving the proposed project by taking actions, such as issuing notice to the Chippewas with regards to the Board's process and role, and granting funding to ensure that the Chippewas did, in fact, participate by filing written submissions and making oral submissions at the hearing. Read the [full article](#) by [Jaimie Lickers](#) of Gowling WLG.

No Charges Will Be Laid over Mount Polley Dam Failure under BC Law

There will be no regulatory charges laid under BC's environmental laws for the Imperial Metals' Mount Polley tailings-dam failure in 2014.

One of the largest mining-dam failures in the world in the past 50 years, it had shaken the industry and caused concerns that aquatic life would be harmed, particularly salmon that use the Quesnel Lake system to spawn. There remains a possibility of federal charges under the [Fisheries Act](#). The three-year deadline to lay provincial charges in a court proceeding – which would need to be approved by B.C. Crown counsel – ends Friday [August 4th]. But a BC-federal investigation isn't complete and will not be finished by [August 4th], Chris Doyle, BC Conservation Officer Service deputy chief, said [August 2nd].

"It's important to note that the limitation period of a particular piece of legislation – that's just one of the considerations agencies must make during the course of these investigations," said Doyle, responding to a question on why there would be no charges under BC laws. "Other factors include the complexity of a situation and the amount of information that needs to be gathered and analyzed."

Doyle said he couldn't say when the investigation would be complete, nor would he comment on the nature of

the probe. In a written statement, B.C. Environment Minister George Heyman said British Columbians should know the overall objective continues to be ensuring a "complete investigation." Read the *Vancouver Sun* [article](#).

Super Power: Are Rechargeable Batteries Transforming the Mining Sector?

Advances in consumer and industrial technology are creating a new demand for minerals such as lithium, cobalt and graphite and make mining itself more efficient and profitable.

Though global demand for minerals has declined in recent years, not least because of China's slowing fiscal growth and transition to a consumer and services-led economy, there are signs of vigour in the mining industry.

Rechargeable batteries for portable electronic devices, electric cars and other products, as well as a mounting interest in energy storage, has created a worldwide demand for lithium and other key minerals, such as cobalt and graphite. The market for these minerals is expected to balloon in the coming years as the world increases its focus on harnessing new sources of renewable energy – and energy storage becomes a priority.

At the same time, technology is transforming the mining industry, making it more efficient, more productive and ultimately more profitable. Read the [full article](#) by [Charles Bond](#) and [Stuart M. Olley](#) of Gowling WLG.

Abandoned Oil Well Battle Will Go to Supreme Court of Canada, Lawyer Predicts

A battle over whether energy-company creditors should help pay for cleaning up thousands of abandoned oil wells may be heading to the Supreme Court of Canada.

At the centre of the dispute is Redwater Energy Corp., a small publicly traded oil producer in Alberta that filed for bankruptcy in late 2015. The receiver that's liquidating the company argues it should be able to sell its best wells and leave the worst behind for an energy industry-funded group to clean up. The province's regulator argues that buyers should have to take both good and bad wells, even if it means that the sale proceeds will be lower.

A court in Alberta sided with the receiver in May 2016, reducing companies' concerns about the legal liability of walking away from some of their oil wells. Since then, the number of inactive, abandoned, or otherwise orphaned sites has more than doubled to 3,200, according to the Orphan Well Association, the cleanup group. The provincial government has given the organization an emergency loan to fund the growing costs. Read the full *Financial Post* [article](#) by Allison McNeely and Kevin Orland.

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:

Tax Proposals Affecting Private Companies and Their Shareholders: Income Splitting

The term "income splitting" describes strategies designed to shift income from one taxpayer who pays tax at a high rate of tax to another taxpayer who pays tax at a lower rate. For decades shareholders of Canadian private companies have included the business owner who is actively engaged in the business and members of his or her family. The family members may hold their shares either directly or indirectly as beneficiaries of family trusts. Until now there have been few restrictions on the dividends that could be paid out to the family members. According to the Paper [the Liberal Government's "*Tax Planning Using Private Corporations*"], the government now views the ability of business owners to split income and therefore take advantage of lower marginal rates to be "fundamentally unfair". Read the [full article](#) by Cathie Brayley, Areet Kaila and Richard Weiland of Clark

Wilson.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Subsidy Regulation (74/97)	July 1/17	by Reg 87/2017

FOREST & ENVIRONMENT

Forest and Environment News:

BC Ministry of the Environment: Contaminated Sites Protocols and Guidance Documents Released

As a result of [Stage 10 \(Omnibus\) amendments](#) to the [Contaminated Sites Regulation](#) (CSR), the following Contaminated Sites Protocols and Guidance Documents have been updated or developed and are now ready for stakeholder comment:

- Protocol 2: Site-Specific Numerical Soil Standards
- Protocol 6: Eligibility of Applications for Review by Approved Professionals
- Protocol 11: Upper Cap Concentrations for Substances Listed in the CSR
- Protocol 13: Screening Level Risk Assessment

Read the [full news bulletin](#) on the British Columbia Environment Industry Association website.

Vandals, Thieves and Outdoor Enthusiasts Disrupt BC Firefighting Efforts

Frontline workers risking their lives battling wildfires across BC are now adding thieves, vandals and careless outdoor enthusiasts to their list of problems.

On Saturday [July 29th], 148 wildfires burned across BC, while 4,700 people worked with the BC Wildfire Service to control them.

But public interference with these operations has become an increasing concern, particularly in areas where there have been evacuation alerts, said Kevin Skrepnek, BC Wildfire Service's chief fire information officer. Skrepnek said there have been multiple incidents in the Cariboo Region of people accessing areas where crews are fighting fires, including people driving through these areas on off-road vehicles.

As well, people are accessing areas where there are helicopters operating and they're using boats in bodies of water and hampering water-skimming aircraft operations. Water hoses, pumps and other firefighting equipment have been vandalized or stolen, Skrepnek added.

"This is not only posing a risk to the members of the public who are doing this, but also it's potentially impacting our operations and affecting the safety of our crews as well," he said.

The BC Wildfire Service is working closely with the RCMP to combat the problem, which has been particularly bad in Williams Lake, the Chilcotin Region and along the Highway 97 corridor.

"Certainly, there's zero tolerance for any criminal activities in evacuated areas or in areas where we're operating," Skrepnek said. "Anyone suspected of theft or mischief is going to be arrested."

Skrepnek said RCMP and conservation officers have stepped up patrols in areas where interference is an issue and where crews are working. The BC [Wildfire Act](#) and [Wildfire Regulation](#) allows authorities to order people to leave an affected area. But if such behaviour continues to be a problem, they may need to implement area closures around fire sites, on lakes and in the backcountry, Skrepnek added. Those caught interfering with firefighting operations or burning a campfire during a prohibition face fines of \$1,150. Read the full *Times Colonist* [article](#) by Nick Eagland.

Recovering the Species at Risk Act

Wildlife is central to the Canadian identity. From Indigenous communities to the urbanites of our largest cities, an overwhelming majority of Canadians want the federal government to protect and restore species at risk of extinction.

The principal federal instrument that provides for this protection is the [Species at Risk Act \(SARA\)](#), passed by Parliament in December 2002. SARA's purposes are to prevent extinction, to recover species currently threatened directly or indirectly by humans and to manage other species to prevent them from becoming endangered or threatened in the future. Judged against these objectives, SARA has underachieved because of withering political interest and weak policy prescriptions. Read the [full article](#) by the Institute for Research on Public Policy (IRPP) on *LawNow*.

Environmental Appeal Board Decisions

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

[Wildlife Act](#)

- [Robert J. Cutts v. Deputy Regional Manager, Recreational Fish and Wildlife Program \(Kootenay-Boundary Region\)](#) [Final Decision – Appeal Dismissed]
- [Hans-Albert Jacobs v. Deputy Regional Manager, Recreational Fish and Wildlife Programs](#) [Final Decision – Appeals Dismissed]
- [Fraser MacDonald v. Regional Manager, Recreational Fisheries and Wildlife Program, Omineca Region](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Cattle Industry Development Council Regulation (240/94)	July 28/17	by Reg 154/2017
Grain Industry Development Fund Regulation (236/90)	Aug. 1/17	by Regs 154/2017 and 155/2017

HEALTH

Health News:

CMHA Welcomes New Ministry of Mental Health and Addictions for BC

The Canadian Mental Health Association, BC Division (CMHA BC) is pleased to welcome the Honorable Judy Darcy as BC's Minister for Mental Health and Addictions.

"We are hopeful that the formation of the Ministry of Mental Health and Addictions signals a shift to give mental health and addictions care the priority and investment it needs," says Bev Gutray, CEO of CMHA BC. "We look forward to working together to improve the mental health of all British Columbians – b4stage4."

A dedicated Minister of Mental Health and Addictions with a dedicated budget has been one of the goals of CMHA BC's B4stage4 campaign. Thousands have signed the b4stage4 declaration, which calls for action in five areas:

- focus on prevention and early intervention
- build an accessible addictions health care system
- strengthen recovery closer to home
- improve crisis care
- lead change in mental health and addiction

Read the [full news article](#) by the Canadian Mental Health Association.

Cannabis and the Constitution

The end of prohibition may be the beginning of new constitutional frontiers

On April 13, 2017, the federal government tabled legislation designed to end nearly a century of prohibition on the production, sale and possession of cannabis. The government's plan is ambitious and would make Canada the first G7 country to legalize and regulate cannabis.

The government's scheme on cannabis is actually two bills. [Bills C-45](#) (the "*Cannabis Act*") and [C-46](#) (*an Act amending the Criminal Code*). The *Cannabis Act* would create a regime governing the legality of possession and sale of cannabis, the licencing of producers, and rules on how cannabis may be advertised. The provinces and territories would be responsible for setting up a legislative regime for the distribution and sale of cannabis, subject to the minimums set out under the *Cannabis Act*. Bills C-45 and C-46 would also create new criminal offences for those who provide cannabis to youth and create a system for roadside testing for cannabis impairment and new penalties for all those offences.

Whether one agrees with the government's legislation or not, it is a reasonably safe bet that it will result in years of constitutional challenges. Read the [full article](#) by Tom Posnyiak of Blake Cassels and Graydon LLP on *Bar Talk*.

SCC Rejects Promise Doctrine in Seminal Pharmaceutical Patent Case

The Supreme Court of Canada's (the "Court" or the "SCC") recent judgment in [AstraZeneca Canada Inc. v Apotex Inc.](#), (2017 SCC 36, "*AstraZeneca v Apotex*") released on June 30, 2017, constitutes an important paradigm shift in Canadian patent law. As described in greater detail below, the SCC has rejected the "promise of the patent" doctrine (the "Promise Doctrine"), a doctrine which has been a unique and fundamental principle in Canadian patent law, used to determine if the subject matter claimed in a patent is useful, as required by [section 2](#) of the *Patent Act*.

This decision appears to be a victory for those seeking patent protection in Canada, arguably lowering the standard to be met for utility and providing some guidance to patentees and their agents with respect to information that should and should not be included in the specification. However, it should be noted that disclosure requirements in Canada remain unchanged with respect to soundly predicting utility of claimed subject matter and clients and foreign counsel should continue to be made aware of these requirements. Read the [full blog post](#) by A. Chandimal Nicholas of Cassels Brock.

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	July 1/17	by Reg 93/2017

LABOUR & EMPLOYMENT

Labour and Employment News:

Wildfire Evacuees' Jobs Lack Legal Protection, Lawyer Says

However, lawyer says he's never heard of anyone being dismissed from their job due to a disaster
A Kelowna lawyer says the jobs of tens of thousands of British Columbians forced from their homes by wildfire are not protected by law.

Labour and human rights lawyer David Brown says the BC [Employment Standards Act](#) does not protect employees – who at this stage, may have been prevented from working for over a week – from dismissal due to disaster-related absences.

"The BC *Employment Standards Act* provides minimum rights and entitlements to most workers in British Columbia, and that's going to cover leaves of absence for parental reasons, maternity leave, bereavement leave," Brown told *Radio West* host Alya Ramadan.

"That being said, there's nothing in the legislation that protects individuals in the event of a natural disaster like what we're dealing with in the Interior of BC. In theory, if someone is displaced from work because they're being evacuated ... there's nothing in the British Columbia *Employment Standards Act* that protects them from termination. It's not a recognized right." Read the [full article](#) at *CBC News* by Liam Britten.

Occupational Health and Safety Regulation Amendments

On August 1, 2017, the [Occupational Health and Safety Regulation](#), B.C. Reg. 296/97, was amended extensively to ensure the safety of flow piping systems under the conditions being operated and that they are properly restrained. Due to advancements in technology, the operating pressures of flow piping systems have become far

greater in recent years, posing risk of serious injuries to workers when flow piping systems fail and the component parts are not restrained properly. As a result, the Regulation was updated to allow for restraint systems other than wire rope restraints to be used to provide equal or greater protection. For clarification, a new definition of "flow piping system" was introduced that describes the requirements applying to temporary or portable above ground piping systems. Applicable activities include drill stem testing, swabbing, cementing, well servicing and stimulation.

Witness Interviews: Rights and Obligations of Corporate Employees

In claims brought against retail establishments it is not uncommon for opposing counsel to seek to interview the organization's employees, in addition to conducting an examination for discovery of a representative for the company. The employees' evidence is often very crucial to determining liability. The focus of the enquiries usually centers upon whether corporate policies and procedures were in fact being followed prior to the event which is at the heart of the litigation. In British Columbia [Rule 7-5](#) of the [Supreme Court Civil Rules](#) governs the pre-trial examination of witnesses. It applies to both past and present employees. If an employee refuses to respond to requests for interview Rule 7-5 permits counsel to seek an order requiring the employee to attend a pre-trial examination under oath. A retail establishment, and its counsel, must not prevent access to witnesses. However, it is appropriate for the establishment, or its counsel, to notify employees of the request to be interviewed. The employees may also be advised of their rights and obligations pertaining to such interviews. For example, an employee may request that all inquiries be in writing and they may respond in the same fashion. Read the [full article](#) by Kim Yee of Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	July 1/17	by Reg 34/2017
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	July 1/17	by Reg 34/2017
Occupational Health and Safety Regulation (296/97)	Aug. 1/17	by Reg 142/2017
Salary Range Regulation (152/2017)	NEW July 18/17	see Reg 152/2017

LOCAL GOVERNMENT

Local Government News:

Vancouver Introduces Empty Homes Tax

- Vancouver's new Empty Homes Tax became effective January 1, 2017.**
Targeting the approximately 10,000 year-round empty and 10,000 under-occupied homes in Vancouver, homes which are unoccupied for six full months of the year or more will be subject to the new 1% Empty Homes Tax (the "EHT") imposed by Vancouver's new [Vacancy Tax By-law No. 11674](#) (the "By-law"). Homes that are determined or deemed to be vacant will be subject to an EHT equal to 1% of the property's taxable assessed value in addition to the existing property tax. The EHT will be applied annually, with the first taxation year beginning January 1, 2017. The tax for 2017 would be payable by April 2018.
- Who won't be subject to the tax?**
Most Vancouver homes will not be subject to the EHT. Residences being used as a principal residence by the owner, a family member or a friend for at least six months of the tax year will not be charged the EHT, nor will properties that are rented long-term (with a written tenancy agreement), for at least 30 days in a row for a minimum of six months in aggregate over the course of a year.
- What is a vacant home?**

A home is not a vacant home and thus not subject to the EHT when it is being used as a principal residence by the owner or the owner's family or a friend for at least six months of the year. The By-law has its own definition of what is a principal residence, which is not necessarily the same as other laws. The By-law provides that a principal residence is defined as:

Read the [full article](#) by [Edward Wilson](#) of Lawson Lundell LLP.

Vancouver City Council Contemplates Strategies to Reduce Single-Use Waste

On June 27, 2017, City of Vancouver Staff updated City Council on new strategies to reduce single-use items like disposable cups, plastic and paper shopping bags, foam food packaging and take-out containers. City Staff researched the subject at the request of council, as part of the city's Greenest City Action Plan (GCAP) and the city's goal of becoming a zero waste community by 2040. Consultations and round-table discussions on single-use waste reduction with industry, not-for-profit organizations, experts and the public will take place over the summer. A consultation paper will follow.

The City estimates that 2.6 million coffee cups and 2 million plastic bags are thrown in the trash weekly, which would result in 34 million cups ending up in the landfill or as street litter this summer. The City also notes that disposable cups and take-out containers make up 50 percent of public waste, which add substantial costs to the City's waste management budget. Read the [full article](#) by David W. Bursey and James Struthers of Bennett Jones LLP.

Police Resources Impacted by Wildfire Situation

UBCM has received correspondence from the Province regarding the July 7, 2017 declaration of a provincial state of emergency under the [Emergency Program Act](#), and impacts to local police resources resulting from the wildfire situation. As part of the Province's efforts to manage this situation, resources within the Provincial Police Service and extra-provincial RCMP resources have been deployed or are under deployment authorization.

As a result of being in a provincial state of emergency, the situation is also considered a policing "Emergency" under the Provincial Police Service Agreement (PPSA) and Municipal Police Service Agreement (MPSA), meaning:

- This is an "urgent and critical situation of a temporary nature that requires additional police resources to maintain law and order, keep the peace or ensure safety of persons, property or communities"; and,
- Local jurisdictional police do not have sufficient resources to manage the situation within their geographical boundaries.

Read the [full article](#) on the Union of BC Municipalities website.

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Building Code Regulation (264/2012)	July 20/17	by Reg 44/2017

MISCELLANEOUS

Miscellaneous News:

Lobbying in British Columbia – Change is Coming

With the New Democratic Party (NDP) forming British Columbia's next government, lobbying regulation in British Columbia is about to change. The [2017 Confidence and Supply Agreement between the BC Green Party Caucus and the BC NDP Caucus](#), which gave the NDP the votes to form government, refers to lobbying reform as a core policy initiative. The expected changes to the [Lobbyists Registration Act](#) (the Act) will affect many stakeholders:

- Businesses and other organisations who employ or retain lobbyists must exercise enhanced due diligence and oversight to ensure their lobbyists comply, and to minimize legal and reputational risk for their organisations.
- 770 In-house lobbyists and 288 consultant lobbyist registered as active lobbyists with the B.C. Office of the Registrar of Lobbyists (ORL), must review their registration practices to ensure that they comply with changes to the Act.
- The public and news media may have access to a more robust registry that shows who is lobbying which

public office holder, about what, and when.

Read the [full article](#) by Milos Barutciski, David Bursey, Sharon G.K. Singh and Anna Ren of Bennet Jones.

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

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Court of Appeal – Cyclist 50% at Fault for Collision for Passing Vehicles on the Right

Cyclists commonly split a single lane of traffic by riding near the curb and passing vehicles stopped at an intersection on the right. Reasons for judgement were released today noting that doing so not only violates the [Motor Vehicle Act](#) but can be negligent as well. In today's case ([Ilett v. Buckley](#)) the Court overturned a trial judge's finding of 100% responsibility of the Defendant driver. The court summarized the facts as follows:

[5] Mr. Ilett was riding on the shoulder of Admirals northbound. He was passing to the right of the slow-moving vehicles. Other cyclists were riding on the shoulder in the same way. He considered the shoulder to be a cycle lane. The road was flat for 300 yards leading to the intersection. He was seen approaching the intersection by the driver of the vehicle that was stopped behind Ms. Buckley's vehicle, Messa Mattina; he was visible to her for a significant distance. Mr. Ilett scanned the traffic as he rode and he saw the large vehicle at the intersection ahead. He saw the gap in the northbound traffic ahead of that vehicle opening. He did not apply his brakes to slow his bicycle.

Read the [full article](#) by [Erik Magraken](#) on his blog *BC Injury Law and ICBC Claims Blog*.

CVSE Bulletins & Notices

The following notices have been posted in July by CVSE:

- [CT Notice 02-17](#) – Road Closures: Kamloops to Alberta Border closed to Extraordinary Loads due to wildfire

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

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

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC Supreme Court Holds that a Positive Obligation in an Easement is not Binding on Subsequent Landowners

In *The Owners, Strata Plan NWS 3457 v The Owners, Strata Plan LMS 1425*, [2017 BCSC 1346](#), the Supreme Court of British Columbia considered "whether an obligation to pay certain expenses contained in an agreement registered against title to parcels of land can bind subsequent owners of the land." Much like the court's decision earlier this year in the [Crystal Square case](#), the court in this case found little scope to hold that "such a positive obligation is . . . enforceable against the defendant."

The Owners, Strata Plan NWS 3457 v The Owners, Strata Plan LMS 1425 was a dispute between two strata corporations located next to one another in Surrey. The plaintiff, called Scottsdale Village, was made up of "103 residential townhouse style strata lots." The defendant, called La Costa Green, was "comprised of 150 residential apartment style strata lots." Residents of the two strata corporations have "shared recreational facilities located on the Scottsdale Village lands." This arrangement was formalized by an easement, registered in the land title office when the lands were developed in the early 1990s, granted by Scottsdale Village to La Costa Green. Read the [full article](#) by Kevin Zakreski with BCLI.

Foreign Buyer's Tax: Impact on Housing Market

– from BCREA – Connections

Nearly a year ago, the provincial government implemented an additional 15 per cent Property Transfer Tax (PTT) for residential real estate purchases by foreign buyers in the Metro Vancouver region. BCREA's Economics Department conducted a thorough analysis of the impacts of this policy. The Association created a simulation for the Real Estate Board of Greater Vancouver (REBGV) region, showing where sales would have been if the foreign buyers' PTT had not been implemented. Read the BCREA [article](#).

15% Foreign Buyer's Tax Refunded to New Citizens or Permanent Residents

Effective August 2, 2017, amendments to the [Property Transfer Tax Regulation](#) offer relief to some foreign buyers from the 15% additional property transfer tax introduced a year ago. In order to qualify for a refund, foreign nationals must become either Canadian citizens or permanent residents within one year of the date the property transfer was registered with the Land Title Office. Further, the individual must begin to inhabit the home not more than 92 days after registration, use the home as his or her principal residence, and continue living in the home for at least one full year. Application for the refund must be made after the first anniversary the individual moves into the home, and within 18 months of registering the property.

A Closer Look at the Report on Complex Stratas – Should Strata Corporations be Allowed to Allocate Expenses Paid for Out of the Contingency Reserve Fund to Types?

Currently the [Strata Property Act](#) and the [Strata Property Regulation](#) only allow strata corporations to designate types of strata lots for the purpose of dealing with cost sharing relating to expenses paid for out of the operating fund. Some commentators have suggested that giving types a broader purpose and allowing them to take responsibility for expenses paid for out of the contingency reserve fund too would improve the operation of complex strata corporations. The committee gave considerable thought to this proposal but ultimately decided not to recommend it. Here is a closer look at the committee's reasoning.

Brief description of the issue

Types may only be used to vary the act's general rules on cost sharing in relation to "a contribution to the operating fund [that] relates to and benefits only one type of strata lot." So, for example, in a strata property consisting of an apartment building and townhouses, expenses related to the regular maintenance and upkeep of the building's elevators may be allocated to apartment strata-lot owners. But when the time comes to replace an elevator, this capital expense must be borne by the strata corporation as a whole. Should types be expanded to encompass capital expenses, as well as operating expenses?

Read the [full article](#) by Kevin Zakreski published on the BC Law Institute website.

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

WILLS & ESTATES

Wills and Estates News:

Capacity to Marry: *Devore-Thompson v. Poulain*

Marriage has significant legal implications on the succession of property. Yet, I don't come across either in my practice or my reading, that many cases where a marriage is challenged on the basis that someone did not have the mental capacity to marry. I certainly don't see as many cases challenging the validity of a marriage as I do challenging the validity of a will or transfer of property.

In a recent decision, *Devore-Thompson v. Poulain*, [2017 BCSC 1289](#), Madam Justice Griffin found that Donna Walker did not have the capacity to marry on June 14, 2010, when she went through a marriage ceremony with Floyd Poulain. The validity of the marriage was challenged by Ms. Walker's niece Donna Devore-Thompson, who was an executor named in a will Ms. Walker made before her marriage ceremony, and who was close with her.

The question of whether Ms. Walker had the capacity to marry is significant, because if she did have capacity and the marriage were valid, pursuant to the [Wills Act](#), the marriage would have revoked all of her previous wills. Because she had no descendants, Mr. Poulain would be entitled to her estate as her surviving spouse on the basis that she died without a valid will. I should add that the *Wills Act* was revoked and replaced by the [Wills, Estates and Succession Act](#) on March 31, 2014. Although the new legislation no longer has a provision that says that a marriage revokes previous wills, the *Wills Act* still applies to revoke prior wills on marriage if the marriage took place before March 31, 2014 (unless the will was made in contemplation of the marriage). Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

Who Can Bring a Partition Action?

In order to be able to bring any court action the claimant must have standing. *Pallot v Douglas*, [2017 BCCA 254](#), is a court of appeal case setting out who has the standing to bring a partition action under the [Partition of Property Act](#). It held that a claimant who has the use of a leasehold property pursuant to a trust does NOT have standing to bring an action for partition. Read the [full article](#) by [Trevor Todd](#) on [disinherited.com](#).

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

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